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JOINT COMMITTEE PRINT

CONFERENCE ON MEASURING PROGRESS  
IN PARTICIPATION BY MINORITY AND  
FEMALE CONTRACTORS IN  
FEDERAL PROCUREMENT

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REPORT

OF THE

JOINT ECONOMIC COMMITTEE  
CONGRESS OF THE UNITED STATES



JUNE 12, 1978

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(II)

## LETTERS OF TRANSMITTAL

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JUNE 8, 1978.

*To the Members of the Joint Economic Committee:*

Transmitted herewith is a report on the "Conference on Measuring Progress in Participation by Minority and Female Contractors in Federal Procurement," conducted under the auspices of the Joint Economic Committee at the initiation of the late Senator Hubert H. Humphrey, cochairman of the Subcommittee on Economic Growth and Stabilization. Former committee member Representative Otis G. Pike chaired the conference in the absence of Senator Humphrey. Senator Jacob K. Javits addressed the conference and provided staff assistance to help organize and conduct it.

The report, based on the input of representatives of more than 50 Federal departments and agencies who participated in the conference, consists of staff findings and recommendations, the transcript of the proceedings and an appendix of statements and written responses by departments and agencies to an extensive questionnaire on procurement practices.

The views expressed are those of the participants and staff and do not necessarily represent the views of other members of the Joint Economic Committee or the committee staff.

Sincerely,

RICHARD BOLLING,  
*Chairman, Joint Economic Committee.*

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JUNE 5, 1978.

Hon. RICHARD BOLLING,  
*Chairman, Joint Economic Committee,*  
*U.S. Congress, Washington, D.C.*

DEAR MR. CHAIRMAN: Transmitted herewith is the report on the September 23, 1977, "Conference on Measuring Progress in Participation by Minority and Female Contractors in Federal Procurement."

The conference was initiated by the late Senator Hubert H. Humphrey as cochairman of the Economic Growth and Stabilization Subcommittee of the Joint Economic Committee. It was chaired by former committee member Representative Otis G. Pike in Senator Humphrey's absence. Senator Jacob K. Javits addressed the conference and provided staff assistance to organize and conduct it.

The report is composed of three sections:

Part I. A staff summary identifying the major themes and recommendations stemming from the statements and discussion of conference participants.

Part II. The transcript of proceedings of the opening session.

Part III. An appendix of all written submissions from the various departments and agencies in response to questions on the procurement process.

Michelle Babbitt, legislative research assistant to Senator Javits, and Richard Boltuck, former research assistant on the Joint Economic Committee to Senator Humphrey, are the authors of part I. Prior to the conference, the authors carried out research in this area and found that minorities and women are underrepresented in Federal procurement. In part I they identify the various issues of concern to the minority and female sectors and recommend avenues of change.

In addition the authors review some of the present policy and literature concerning the role of minorities and women as government contractors.

We feel that items I, III, IV, and V are extremely viable recommendations. They should stimulate additional discussion of the problems of minorities and women in the procurement process and serve as a catalyst for legislative action, where necessary. Item II should be the subject for additional and extensive evaluation before it is accepted as a basis for policy and program formulation.

The views expressed in this report do not necessarily represent the views of other members of the Joint Economic Committee or the committee staff.

Sincerely,

JACOB K. JAVITS,  
*Member, Joint Economic Committee.*  
 OTIS G. PIKE,  
*Former Member, Joint Economic Committee.*

JUNE 5, 1978.

HON. RICHARD BOLLING,  
*Chairman, Joint Economic Committee,*  
*U.S. Congress, Washington, D.C.*

DEAR MR. CHAIRMAN: The "Conference on Measuring Progress in Participation by Minority and Female Contractors in Federal Procurement" constitutes one of the last congressional initiatives of my late husband. It reflects his continuing efforts to strengthen and promote the growth of minority-owned business and to provide opportunities for women to assume their rightful role as full and equal participants in the Nation's business community.

Although I am not a member of the Joint Economic Committee, I wish to take this opportunity to commend it for holding the conference under its auspices and to associate myself with the recommendations presented by Senator Jacob K. Javits and former committee member Representative Otis G. Pike.

Sincerely,

MURIEL HUMPHREY,  
*Member, U.S. Senate.*

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## I. STAFF SUMMARY AND RECOMMENDATIONS

Several major themes dominated the presentation of the panelists and ensued during the discussions of the conference. This section is an effort by respective staff members of the Joint Economic Committee and Senator Jacob K. Javits' office to identify these themes, place them in a broader factual context, and suggest direction for reform as indicated from the proceedings. The recommendations are solely those of the staff authors, and do not necessarily reflect the view of other staff members, or of the committee. They should be viewed as departure points for continued exploration.

### GENERAL OVERVIEW

The Federal procurement process accounts for roughly \$60 billion of purchases per annum. For many years, Federal procurement has been utilized as a tool to achieve social ends, particularly to increase the viability of firms owned or controlled by members of classes affected by past discriminatory practices. To eradicate many of these past ills, two major executive actions were taken in the past 10 years:

(1) *Section 8(a) program*.—In October 1967, section 8(a) of the Small Business Act of 1953 was expanded in order to channel Federal contracts to firms located in urban areas of high structural unemployment. By 1969, this initiative, administered by the Small Business Administration, had been altered to stress the development of minority business ownership instead of employment of the disadvantaged.

(2) *Office of Minority Business Enterprise (OMBE)*.—Executive Order 11458 (March 5, 1969) authorized the establishment of the Office of Minority Business Enterprise (OMBE) in the Department of Commerce. Its responsibilities include: (1) Coordinating Federal procurement with minority firms, (2) promoting mobilization of State and local resources for aiding minority enterprise, (3) serving as a data collection center and an information bureau, and (4) funding organizations to provide training and technical assistance for minority entrepreneurs and conducting special pilot demonstration projects.

### THE JOINT ECONOMIC COMMITTEE CONFERENCE

The Economic Growth and Stabilization Subcommittee, at the request of the late cochairman Senator Hubert H. Humphrey, sponsored a conference on September 23, 1977. The purpose for such a conference was to address the Nation's existing minority and female enterprise development program as it pertains to the Federal procurement process. Deficiencies in this area were identified and recommendations were made for improvements in the program. The conference was comprised of a panel of government and private witnesses,

(1)

and a participating audience representing over 50 government procurement offices from the executive departments, bureaus, and agencies. Transcripts of the morning session form part II of this volume, while part III is composed of submissions in response to subcommittee written inquiries regarding procurement practices.

The conference was deemed timely in light of the critical relation of procurement policy to the economic development of disadvantaged small business. In addition, many factions indicated intense and diverse interest in the development of Federal procurement policy, including proposals to extend affirmative action procurement to female entrepreneurs.

Several women's organizations contended that data collection and analysis pertaining to the female element in national enterprise, and as sellers to the Federal Government, were grossly insufficient to provide the information base needed to enact a new social policy to encourage development of female firms.

Concurrently, illegalities within the SBA's 8(a) program resulted in a moratorium and no new firms received certification for entrance into the program. The moratorium was subsequent to much publicized hearings of the Senate Subcommittee on Federal Spending Practices and Open Government. These hearings, chaired by Senator Lawton Chiles in July 1977, exposed blatant instances of noncompetitive awards under the 8(a) program secured through the "fronting" of minorities in substantially nonminority businesses, in addition to other abusive practices. The moratorium has been lifted and SBA has made a commitment to tighten the reins on its administration of the 8(a) program.

In early September 1977 the President announced his instruction to all executive departments to double their purchases of services and goods from minority firms, through direct and indirect procurement activities during the next 2 fiscal years. The President expects this increase to raise the level of Federal Government purchases from minority firms to about \$1 billion. (See attachment 1.) Accurate data on such contracting is not readily available and, undeniably, reliable statistics are crucial to proper pursuit of the President's target.

The conference was intended to cast light on these areas by assembling: (1) The officials who interpret the existing laws and policies, (2) those who are dissatisfied with these policies and their implementation, (3) the congressional legislators who have the ability and responsibility to effect change, if necessary, and (4) the procurement personnel who award contracts in compliance with existing policies.

### GENERAL FINDINGS

Participating agencies and departments, which included many of the major procurement offices, submitted a voluminous amount of material in response to staff inquiries on the Federal procurement process. (See part III).

The nature of procurement activities makes it difficult to package into generalizations. With the exception of the General Services Administration (GSA) which is responsible for purchasing all civilian government vehicles and buildings (or ordering construction), and many smaller items of shared utility throughout government such as office supplies, most purchases placed by government agencies are

small in dollar value—under \$10,000. Though the number of contracts under \$10,000 is unknown, this note has strong implications for designing an effective procurement program responsive to those groups targeted by this affirmative action initiative.

None of the agencies collected data on female owned, controlled, or managed businesses, and many indicated that in the absence of congressional or Executive directions to do so, they would not commence such actions on their own. However, most officials indicated that additional data on women could be collected in the future at a relatively small expense to the agency. The conference participants reported that the quality of data their agencies maintained was generally good, although not superior. In contrast, data from the 8(a) program was superior. This is attributed to SBA's task of contracting and monitoring subcontracts. The quality of data, where available, deteriorated as the tiers of contracting increased. In part, this is due to the lack of attention paid to the origin of the components of the final products; i.e., did a certain nut or bolt originate with a minority firm? In addition, this unsupplied information is often due to ill-defined requirements for reporting, and weak enforcement. GSA does require nominal reports from the contracting agencies through to the subcontracting level, but they questioned the reliability of this data. In some cases, procurement officials expressed doubt as to the veracity of primes in reporting subcontract composition.

Procurement for the Department of Defense is unique as the Department has special procurement needs and contracts with comparatively few, and the same, major contractors to deliver reliable defense systems. Therefore, DOD controls the subcontracting process about as closely as most other agencies and departments control their prime contracting processes.

Some agencies reported a "cumbersome relationship" with SBA in administering the 8(a) subcontracting program. This group includes the Department of Housing and Urban Development, and the Department of Agriculture. Other departments, including GSA and the Veterans' Administration note the "inordinate time" involved in filling some 8(a) subcontracting needs, thus making procurement through SBA comparatively laborious and inconvenient to the agency's own competitive award procedures. The Department of Health, Education, and Welfare, however, claimed that 8(a) subcontracting took less time than its in-house procedure. The difference may result from variances in the efficiency of competitive bidding from department to department.

While these actions provide a working background for better understanding the present procurement process, the problems which must be addressed are best discussed in relationship to the recommendations presented in the following section. Prior to discussing the components of an improved system, it should be noted that in the following recommendations, the procurement process is regarded as an appropriate tool to achieve certain objectives. Additionally, the procurement field is comprised of both private and public institutions whose duties should be closely integrated: The Office of Federal Procurement Policy in OMB, GSA, OMBE, SBA, the multitude of procurement offices, departmental minority business enterprise councils and so on. At this time the respective staff members have not undertaken a comprehensive review of the intermeshing of these

parties as the issue requires a study unto itself. Rather, the recommendations center upon constructive, broad approaches which warrant consideration by Congress, the President, and others in a position to influence the Federal procurement process.

#### RECOMMENDATIONS

*I. Innovations in policy administration of proven effectiveness should be adopted and implemented rapidly, by executive order if necessary.*

The General Services Administration has implemented an experimental contracting procedure which has proven to be of significant value in promoting minority small business. The program presently is limited to selected GSA construction contracts.

The primary element of the GSA program is a contractual requirement that 20 percent of construction subcontracts go to minority-owned firms. Used on a limited scale for only several months, this program has already resulted in more than 20 million contracting dollars being awarded to minority subcontractors, with projections of a marked increase in the near future.

The 20 percent obligation is imposed in an appendix to the standard GSA construction contract. (See attachment 2.) Attachments to the appendix include a certificate of compliance which requires all contractors to list all minority subcontractors they intend to employ, and the dollar value of the subcontract to be awarded. Failure to fulfill the terms without evidence of making "every reasonable good faith effort" (including steps specified in amendments to the standard form), can result in the contracting officer taking either of two courses: (1) He may terminate all or a portion of the contract ("the carrot"), or (2) he may weigh previous actions in determining the "responsibility" of the firm for the awarding of future contracts ("the stick").

Mr. Ed Mitchell, Director of the GSA Contract Compliance Division and a conference panelist, characterized this "carrot-stick" approach as "pioneering," but also predicted it would take a minimum of 5 years to incorporate into the Federal Procurement Regulations (FPR) which govern the procurement activities of all agencies and departments.

We support the above-mentioned GSA program and recommend its widespread application.

We urge the Interagency Council for Minority Business Enterprise (see attachment 3), composed of Under Secretaries, Deputy Secretaries and Deputy Administrators of major agencies and departments, with the responsibility for promoting minority business assistance from within the Government to promptly bring this program to the attention of the President. In light of the President's ambitious commitment to double minority procurement throughout the Government in 2 years we hope he sees fit to use his authority to override normal course by implementing such a program through an Executive order.

*II. The 8(a) program should be administered through direct agency and departmental contracting, rather than through SBA subcontracting. The SBA should continue to vigorously monitor the program and encourage cooperation with government procurement offices. In addition, SBA also should function as a clearinghouse of information on certified disadvantaged contractors.*

Problems within the 8(a) program are evident. In 1977, the program was shadowed by the cloud of congressional investigation and disorder was so recognized that new firms were not certified. To abate past abuse, some firms were decertified without due process as was subsequently determined in court. (See attachment 4.) One judge said that the SBA decertification review procedure "did not constitute a hearing in the United States."

Many procurement officials at the conference claimed the process of purchasing through subcontracts had inherent deficiencies. One difficulty was due to the legal prime contractor being the Small Business Administration, not the firm filling the order. Thus, the responsibility for compliance lay with the SBA rather than the contracted firm. Courts have ruled that a department cannot default the SBA, another Government agency for nonperformance, or inadequate performance. The Department of Agriculture's attempts to do so have been unsuccessful. Consequently, some agencies admit to a hesitancy to enlist certified minority firms through SBA for fear of entering an inflexible arrangement. This apprehension by the contracting department inhibits full use of the program. The more accountable the individual firm, the more use the departments will make of the program.

For similar reasons, the subcontracting procedure is a disservice to participating minority firms who receive "special treatment." The low rate of graduation from the 8(a) program (first documented by the General Accounting Office in a 1975 report) (see attachment 5), may be partially due to the special status which exists through a subcontract. "Special treatment" cannot help but undermine the self-respect of minority business owners who aspire for eventual entry into the competitive mainstream. If the 8(a) program were administered through direct contracting, one level of bureaucracy—an entire set of legal relations—would be eliminated.

Perhaps the greatest benefit of such a change would be the ability for efficacious utilization of the critical bulk of procurement money now disbursed in small purchase contracts of under \$10,000. According to one agency official these purchases are viewed as "nickle and dime stuff" and often are acquired after three or fewer perfunctory bids are obtained from companies listed in the yellow pages of the telephone directory. SBA lists should be employed rather than the yellow pages. Such action may result in increased minority procurement. In addition, these contracting dollars could be credited to Departments' targets for minority procurement.

SBA should continue their efforts to certify qualified applicants into the program and then publish lists of minority firms for distribution throughout the Government. If this "clearinghouse" role were SBA's prime responsibility in the 8(a) program perhaps it would be administered with greater thoroughness and equability. Systematic updates, by geographical region and type of firm, would help to assure that certified firms meet eligibility standards. SBA should determine when a firm is ready to "graduate" from the program and see that it does so.

It was found that many subcontracting opportunities sent to SBA are returned unfilled and then must be offered competitively. Via the method of direct procurement, delays in filling contracts, which were noted by several procurement officials, would be alleviated. Under the proposed system each department and/or agency would administer its own contracting program and therefore, be responsible for its own timeliness.

In addition, SBA may elect to reevaluate and perhaps revise the measures used to determine who or which group is socially and economically disadvantaged and institute more objective standards in determining whether a class necessitates assistance. The concept of being disadvantaged and receiving special assistance does not come under question, rather it is the criteria which is being used to render the decision. Indeed, the utilization of the phrase "socially and economically disadvantaged" is nondescript and relies to a great extent on the judgment of the Small Business Administration. The language was gleaned from the Economic Opportunity Act of 1965.

If more objectivity were applied to the selection process, specifically in the economic end (statistical criteria combined with the humanistic element), the function may be administered with greater equality.

III. *Every agency and department should be required to initiate strong efforts to sensitize all of their personnel to the special needs of the minority and female sector in the procurement process.*

The procurement process within a department or agency typically has three major stages. First, a need arises in the operation of the department for certain goods or services which must be obtained from private enterprise. Second, the internal competing needs of the various units of the department are reconciled within their budget constraints by program officials. The contents of the contracts are then defined. The specifications are then passed to the procurement officials who are the department's representatives in the marketplace, actually buying on the best terms available.

In responding to the requests in the awarding of contracts: (1) within the Department, (2) of national policy, (3) of budgetary constraints, and (4) for efficiency and expediency, program officials, we believe, develop contract specifications in ways which decrease the prospect of contracting with minority firms. Procurement officials contend that it is a more arduous and time consuming process to locate a qualified minority and/or female firm. The contracting officials may be aware and sympathetic with the national policy of affirmative action procurement, but unable to implement it properly without cooperation from other links in the procurement chain.

The Department of Transportation, as only one example, has recognized this problem and has developed a series of seminars to familiarize program officials with ways in which they may facilitate the Department's minority procurement objectives. Such efforts should be instituted throughout the Government and might include textual guides prepared for procurement officials by OMBE and SBA.

IV. *Steps must be taken toward increasing procurement with female-owned firms.*

There are three substantive areas concerning female procurement which have been identified:

(1) What constitutes a woman-owned business needs to be clearly defined and uniformly accepted throughout the Government. Presently, 51 percent female ownership characterizes a

female-owned firm although in fact this definition varies among agencies and departments. With the interests of women in mind, we believe the basis for a female-owned business should rely more heavily on the criteria of active management (definitional problems here as well) than on the percentage of female stock ownership. The President's Task Force on Women in Business will address this definitional problem as they study the role women play in the nation's economy. We look forward to their recommendations on this issue.

(2) The female element needs to be incorporated into the data system in order to ascertain the status of female firms in the economy, and their degree of participation in the Federal procurement process.

(3) On the basis of new data, participation can be measured and it can be determined whether special efforts for procurement opportunities need be extended to nonminority female firms.

The Office of Federal Procurement Policy (OFPP) part of the Office of Management and Budget, has taken initiatives toward establishing a definition for female owned firms. The task is inordinately difficult as various factions must be considered and numerous questions answered. Should publicly owned corporations be included in the definition? Does the definition apply to firms which are located in States with community property laws? Is "fronting" for men likely to be a frequent abuse, if definition is based on female ownership?

In a September 1977 report, the House Subcommittee on Minority Enterprise and General Oversight copiously documented the plethora of definitions for a female business now used in existing policies. Quite clearly, this multitude of definitions leads to confusion. OFPP, in attempts to draw information from the private sector to assist them in establishing a definition, tentatively has decided not to solicit information from publicly owned corporations, as the nature of these corporations does not hold for small female-owned businesses. This action was taken at the urging of the President's Task Force on Women in Business. These publicly held corporations may have the following characteristics: (1) A great deal of stock is held by nongender institutions (pension plans, etc.), (2) most corporations have roughly the same sex composition of shareholders, (3) stockholders usually don't exert managerial control, (4) the financial stability of owners is usually not intimately tied to the success of the enterprise, and (5) the data would be costly to accumulate. Affirmative action procurement always has been targeted to small businesses typically organized in partnerships or sole proprietorships.

OFPP will incorporate the female data element in its new Federal Procurement Data System (FPDS) scheduled to be instituted in October 1978.

Attempts to be responsive to female contractors are met with hesitation and skepticism. Some minority firms see a fixed and limited amount of contracting dollars available for non-competitive distribution to targeted groups. They contend that by extending affirmative action to nonminority women, their portion would be further divided, thereby leaving less for minority business. If women were to participate in these programs we would recommend that the allocation for this program be expanded. Mr. Frank Kent, executive director of the

National Association of Minority Contractors, one of the largest national minority associations, is an advocate of women being included in the 8(a) program. However, it is unnecessary to assess this possibility here as the decision to extend the 8(a) program should be based on whether an identifiable group is indeed socially or economically disadvantaged, rather than on minority classification.

Women are not a minority nor should they be classified as such. Classifying them as minorities would present troubles for political leaders, as Representative Pike noted at the conference. Female-owned firms, specifically nonminority female firms, should receive certification for acceptance into the 8(a) program via the criteria of being "socially or economically disadvantaged." A business owner may be disadvantaged for historical reasons without being a member of a minority class; any identifiable disadvantaged class would be eligible for inclusion.

There has been considerable discussion concerning stigmatizing a specific group by labeling them socially and economically disadvantaged. This may be a greater disservice than benefit, specifically psychologically. Philosophically, the authors have difficulty in making such categorizations. However, we acknowledge that it may be to the individual's interest to apply these classifications in that it removes the burden of proof of being socially and economically disadvantaged from the small business person and places it with the Government—the Small Business Administration.

Are women disadvantaged? The answer is not clear. However, the Department of Commerce's figures for 1973 show that 4.6 percent of the Nation's firms were female-owned, while only 0.3 percent of the total receipts were those of female firms. Female enterprise is shamefully underrepresented in the States.

Female-owned firms are unique in their composition and encounter additional problems. They are usually concentrated in the retail and selected services industries, where opportunities for Federal contracting are lower than those firms involved in construction, manufacturing, etc. In some supply sectors, female business is virtually nonexistent, including the manufacturing sector, where it accounts for less than 0.05 percent of volume. In addition, firms owned by women, like those owned by minority men, are "petite" in size, and suffer greater hardships than those normally incurred. They must compete with small businesses, which are substantially larger in size.

It presently is impossible to substantiate whether the Government has discriminated against female entrepreneurs in the procurement process as data is unavailable. This is in contrast to existing statistics which show women certainly are underrepresented in the national economic mainstream. This information may indicate needs for special efforts for women entrepreneurs.

Pending legislation in the House addresses the problem of underrepresentation by socially and economically disadvantaged groups. The legislation presumes that socially and economically disadvantaged groups and group members include American Negroes and Hispanic Americans but are not limited to these groups. The bill states that the presumption of being disadvantaged "may be rebutted with respect to any individual if the administration feels, on the basis of

substantial evidence, that such individual has not experienced impediments to establishing, maintaining, or expanding a small business concern as a result of being a member of a group \* \* \* presumed to be socially and economically disadvantaged.”

The legislation does not direct its attention toward women. However, the present definition of socially and economically disadvantaged groups does provide for some flexibility. In order for women to be included, a change in regulations would be necessary, rather than a change in law. If forthcoming statistics indicate that women “have suffered the effects of discriminatory practices or similar invidious circumstances over which they have no control” then we would encourage this classification to be extended to women. In addition, other classes of people who have been socially and economically disadvantaged should be included for this program if said condition is fully documented.

Following data implementation, appropriate action should be taken concerning proportionate female participation in procurement. Special efforts, although not minority status, should be directed toward women entrepreneurs.

*V. The Congress should adopt national targets for minority and female enterprise within Federal procurement so as to facilitate measurements of growth.*

In May 1975, the Commission on Civil Rights issued a report entitled “Minorities and Women as Government Contractors.” They suggested such a target and urged that:

Within the next 5 years, the Federal Government should increase the annual dollar value of its contracts and subcontracts with minority males, minority females, and nonminority, female-owned firms to an amount at least equal to their representation in all American business (page 129).

Most authorities concede this to have been, under the best of conditions, an overly optimistic and ambitious goal. But the form of the goal statement is appropriate, if indeed, these groups receive less than their pro rata share of contract dollars.

In his September 12, 1977, statement on the development of minority businesses, President Carter ties progress to specified increases in dollar amounts over 2 fiscal years, a relatively short period. This type of goal lends itself to government management planning. Ideally, the President’s objective should be harmonized with a target for longer term progress.

Present data insufficiencies thwart the advocacy of more specific recommendations as we cannot condone or condemn without ample documentation. With set goals, and continuing congressional involvement and monitoring, the effectiveness of these affirmative action programs will be assured.



## II. TRANSCRIPT OF CONFERENCE PROCEEDINGS

FRIDAY, SEPTEMBER 23, 1977

CONGRESS OF THE UNITED STATES,  
SUBCOMMITTEE ON ECONOMIC  
GROWTH AND STABILIZATION OF  
THE JOINT ECONOMIC COMMITTEE,  
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 10:15 a.m., in room 6326, Dirksen Senate Office Building, Hon. Otis G. Pike (member of the full committee) presiding.

Present: Representative Pike and Senator Javits.

Also present: Richard Boltuck, research assistant; and Michelle Babbitt, legislative research assistant to Senator Javits.

### OPENING STATEMENT OF REPRESENTATIVE PIKE

Representative PIKE. Ladies and gentlemen and procurement officials from the various departments of Government and, particularly, invited panelists: First, I apologize for being late. I was almost here, and the bells rang for a vote in the House, and I had to turn around and go back.

I am Congressman Otis G. Pike, presiding in the absence of Senator Humphrey.

You are, no doubt, aware of Senator Humphrey's devotion and dedication to the question of the rights of women and ethnic minorities; and, while we are here in body, I know that he is here in mind and spirit.

The problems we are here to examine are of great importance to social justice and the survival of fairness within a prosperous free-enterprise system.

The President has recently directed that Federal contracting from minority firms be doubled within the next 2 fiscal years. But doubled from what?

I understand from the White House Domestic Policy Council that there were three base figures provided from three different executive department sources.

The Office of Federal Procurement Policy said that \$625 million of contracting for minorities was occurring. The Small Business Administration said \$500 million. The Commerce Department said \$838 million. They are spread all over the map.

The Office of Minority Business Enterprise has the chief statistical function in this area, but the Civil Rights Commission has repeatedly found substantial differences between their own research and the Office of Minority Business Enterprise official figures.

(11)

If changes are to be made, let's make them. If they mean more money must be appropriated, let's do it, but I doubt it. It probably means just getting knowledgeable officials together more often, as we are doing today, and reorganizing the system.

Let me stress: Without good, aggregate figures, Congress will not set a procurement policy. We essentially have never changed the one contained in the 1953 Small Business Act. Such progress as has occurred has been embodied in Executive orders and regulations interpreting the 1953 Act.

One other issue: We should seriously consider the Civil Rights Commission recommendation to extend affected class status to women as well as ethnic minorities. This has not been the Small Business Administration's position in administering the 8(a) minority subcontracting program.

We know in our hearts that women have been victims of discrimination in the business community, too. Perhaps this will require congressional leadership. If so, the discussion today should, or at least may, clarify how.

You should know that a congressionally sponsored conference is a rare event, indeed. It is an innovation in a subject area such as this, and on its success will rest its emulation by other committees.

Witnesses frequently find hearings stilted and stiff, and only limited, selected information can be conveyed to a few people.

Here we are seeking to foster informality, seeking insights and wisdom from these people—not necessarily the heads of departments—who understand best the problems. And we are encouraging interchange. This is accomplished by bringing together everyone who has a substantial contribution to make.

The format for the day will be as follows: First, we will hear from the members of the panel. Then questions of the panel or individual panelists will be entertained from procurement officials in the front rows of the audience section.

Following recess this morning and lunch, the participants will reconvene in three separate but simultaneous workshops. All participants are asked to pick up an assignment sheet before you leave for lunch. The staff will have it prepared by that time.

I understand Mr. Joe Kernan is substituting today for Mr. Winford Smith. Mr. Kernan is the chief of the Program Support Division of the Small Business Administration. That is the Office of Business Development. Is that right, Mr. Kernan?

Mr. KERNAN. Yes, sir.

Representative PIKE. The panel has statements to lead off with. Mr. Kent, are you prepared to go first?

Mr. KENT. Yes, sir.

Representative PIKE. Fine.

#### **STATEMENT OF FRANK KENT, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF MINORITY CONTRACTORS**

Mr. KENT. Thank you very much, Congressman Pike and members of the Joint Economic Committee, and procurement officers from the various agencies.

I am pleased to be here to represent the National Association of Minority Contractors, an organization which represents approxi-

mately 75 percent of the minority contractors in the country, to talk about an issue which is very important to us because it means our lifeblood.

Very firmly, we believe in the capitalistic system and the free-enterprise system. And because we believe so strongly in it, I want to make a couple of points this morning, because we believe that our country is at a point where it is in serious danger.

Congressman Parren Mitchell spoke to us yesterday at our annual conference and he said something that almost all who were at the luncheon agree with.

We are not so much afraid of dangers from the outside as much as we are of dangers from within. Our country is going to be strong if we enable every citizen to really obtain those things that the Constitution and the Bill of Rights provide. And that is everyone has the right to really pursue his highest dream or goal.

Several years ago, when I was interested in the Defense Department's procurement activities, I was amazed with the percentages, which were 0.007 percent minority procurement. That was out of billions of dollars.

Yesterday, Congressman Mitchell said that a study which his office had done showed that there is not more than 1 percent minority procurement by any agency of the Government.

If that figure is correct, and I believe that is, then we are not doing a very good job of bringing minorities into the mainstream of our American economic life, and government, which should be showing the way, is not showing the way.

The second part of the issue is that President Carter did announce that his administration wants to double within 2 years minority procurement. If they double it within 2 years, minority procurement goes from 1 percent to 2 percent. That is a good move, but I believe that parity for minorities and women in this country can be achieved. There are qualified minorities who can bid for the jobs competitively and can get the jobs done.

An interesting thing happened earlier this year. The Interior Department, probably had one of the worst records of any agency in terms of minority procurement. It had never had more than a million dollars in minority procurement in any given year. Yet this year, in one quarter, with some concentrated activity, it went from \$1 million to \$17 million.

Now, that says an awful lot of things to me. What it says is that, if there is a concentrated effort by procurement people to find minorities and get them involved in getting those contracts, the job can be done.

We found out an interesting thing in the District of Columbia working with the procurement people. The District had a percentage rate of about 2 or 3 percent minority procurement in a city that has a 75 percent minority population.

The procurement people had difficulty believing that there were qualified minorities who could do the job. When we suggested to them, "Set goals of 10 percent," they said, "That's too high." We said, "We have already demonstrated that when Metro—transit authority—set minority goals of 15 percent, we met it every single time, even though the major contracting firms had said, 'There is no way you can make it.'"

But, all of a sudden, when the goals were set, somehow they found the minority firms, legitimate minority firms.

In 3 years with Metro we were able to claim \$80 million in contracts from minority contractors.

What is the reason for that? It is a concentrated effort.

I believe most people involved in procurement really don't know where to look for minorities. Perhaps today we can make suggestions.

Where do you find them?

I think the same question goes for women. However, Dona O'Bannon is going to speak about that, so I am not going to go into that part of it.

But I am sure that the same thing applies there.

We found the Defense Department, when we were doing this study, did not keep accurate records. It had no idea, for example, how many minority subcontractors there were. The figures which we were given really didn't portray the actual number of minorities who were in fact contracting with the Defense Department either through prime contracts or subcontracts.

I think that accurate records are a key requirement, not only for prime contractors, but for subcontractors as well.

Finally, we found that far too many people who have the responsibility for procurement think that this is a matter for the Office of Civil Rights, as opposed to the Office of Procurement. I am suggesting that if the minority procurement program is to work, it has got to be something which pervades the entire agency, particularly in the places where the contracts are made.

The National Association of Minority Contractors is willing to assist you in any and every way to provide opportunities for minorities. We will be glad to help you find those minorities.

I believe that most of you have received a copy of our *Minority Builder* magazine, which we publish on a bimonthly basis. If you did not receive a copy of it, we will have some copies before the end of the meeting for you.

Through that magazine we are trying to give you success stories of minority contractors, architects, and engineers whom you can read about and, hopefully, file away and invite to bid on the various projects that you have.

In addition to that, we publish a digest that goes to most minority contractors in the country and identifies job opportunities. We would be very happy to publish those opportunities which your agency may have so that minority contractors can know about them.

They don't always read the journals that you probably use, but they get this digest and they know that it is slanted toward their interests. I think that you will find you will get some response.

I will be happy at some point, Congressman, to answer questions.

Representative PIKE. I think that the most orderly way to proceed would be to let the entire panel speak first and then let the whole panel respond to questions.

The next person to testify will be Mr. Ed Mitchell, the Director of Contract Compliance Division of the General Services Administration.

**STATEMENT OF ED MITCHELL, DIRECTOR, CONTRACT COMPLIANCE  
DIVISION, GENERAL SERVICES ADMINISTRATION**

Mr. MITCHELL. Congressman Pike, ladies and gentlemen, I look at this opportunity that has been given me today in two ways. Not only can I express some of my experiences to you in working with the so-called business arm of the Government, but likewise learn from you so that I can participate with you in changing what I agree, with Frank Kent, is an untenable situation.

Representative PIKE. Mr. Mitchell, I will interrupt you just enough to say that, if you don't teach me more than you learn from me, this is going to be a failure. [Laughter.]

Mr. MITCHELL. Because of the credibility question, I would like to take just a miniscule amount of time to give you a little bird's eye view of this agency that I represent.

GSA is basically a service organization and, under the direction of its Administrator, Joel W. Soloman, is organized like many of your organizations, or like much of the private sector, as a multi-billion-dollar conglomerate conducting business in several diverse fields ranging from what could be classed as broad policymaking for the total government to service through people.

Its principal customers, the recipients of its goods and services, are primarily the other offices and agencies that make up the executive branch of the United States Government.

After a quarter of a century of service to the Federal Government and the American taxpayer, GSA is continuing to refine its methods of meeting its traditional responsibilities for Government work space, supplies, and records.

Today, the agency is changing and looking to the future, not the past. It is responding to fresh challenges that all institutions work to improve the quality of life in America.

People are important to GSA, both its own employees and those it serves. I think it has been the emphasis on people, the human approach necessary to achieve excellence, for which we strive.

Within GSA we recently have been using what we call a systems approach to tie all facets of our management together, to relate objectives to plans, plans to programs, and programs to services, services to resources, and resources to schedules and costs, and all within the same conceptual framework and all projected several years into the future.

As a facilities manager for the Federal Government, GSA uses as a prime consideration in selecting sites for new construction projects, as well as for leased space, the availability of low- and moderate-income housing on a nondiscriminatory basis, public transportation, and the like. Where these items are not available, many persons, minorities and females, and large numbers of young white families, find that because of the high housing costs they are in effect denied jobs and opportunities.

We have for some time recognized that a number of socioeconomic problems have been alleviated, if not eliminated, through the Federal procurement process.

GSA's objective is to fully use this process to assist the disadvantaged in becoming viable business entrepreneurs and taxpaying citizens as they strive for a more equitable share of our private enterprise system.

We do have various information systems, one for internal work, others for instance that I have in my Contract Compliance Division activities, which can provide managers from division chiefs to the Administrator with the information upon which to base informed Equal Employment Opportunity decisions.

I do not want you to take that statement, though, as an indication that GSA today can give you a reliable figure as to the number of contracts, in their totality, awarded to either minorities or female firms.

A few years ago, when we were giving a workshop to enhance opportunities for females, we couldn't come up with that figure. We were able to find out that we had six female construction firm owners on projects all over the country, and some 89 females in key jobs on construction projects, as of August 12 of that year.

But as to how many precisely in total, we did not know, and to my personal knowledge, I would not under any circumstances say in this forum that we do have a reliable plan that could do that right now.

Our affirmative action plans have been approved earlier, and in some cases made models, but we recognize the fact that we have come nowhere near our goals, although we have made significant progress when you compare it with what we were doing a few years ago.

But we still are nowhere near it, though we are willing to try new things.

Now, just for a moment, so you will have a little background in which you can judge whether the statements I make are believable, are worthy of belief, let me tell you what the scope of my current responsibilities are as Director of Contract Compliance with GSA.

This is the program related to employment and evaluation of affirmative action on the part of contractors that do business with the Federal Government.

The Compliance Division in GSA, which I head, is assigned three construction industry codes for both the General Services Administration and the Postal Service.

If you consider, then, the construction projects that are on paper—not those that are in being right now, but on paper—you are talking about literally thousands of projects.

If you consider what is in-being right now, you are talking about some 900 to 1,200 projects of quite extensive costs that are going on all over the United States at the present time.

In addition to construction, we are assigned the responsibility for 36 service and supplies industries, some of them of critical importance.

The utilities industries—communications, paper, lumber products, and ground transportation, just to list a few—employ millions of our civilian work force.

Now, let me tell you what we have done in the past.

First, I will start from where we were not too many years ago. We had only given \$300-and-some-odd-thousand to minority contractors

in a given period of time. Since that time, we have been able to increase minority procurement in one program alone to a rough average in excess of \$50 million a year.

It has been quoted at various times, a few years back, that GSA was doing about a third of the work that was done in the Federal Government in the 8(a) program.

We did establish business service centers, in many key areas all over the United States, to assist disadvantaged entrepreneurs so that they could become more viable. We did start emphasizing women's participation, and here in Washington one year we had a special meeting for it.

We have a circuit-rider system to assist disadvantaged entrepreneurs, and periodically we go all over the United States on that. We have conducted seminars. We work with the principal associations such as the National Association of Minority Contractors.

On the other side of the coin are the Mechanical Contractors of America and other groups which we work with, nationally and locally, in our different field offices.

Our goals for the 8(a) program are continuing. We likewise try in many ways to do other things to increase the opportunity for the disadvantaged in the business field. I will give just one or two examples.

We broke through a logjam that permitted us to put a building housing a private activity managed by minorities, on Federal property in Denver, Colo. It is a model daycare center run and operated by Hispanics.

In that same area we set up a vehicle maintenance shop, which, because of the high density of Government employees, the minority firm was almost assured of success.

In our so-called model building in Seattle, the maintenance contractor is a minority.

We put concessions in buildings. GSA manages some 10,000 buildings nationwide. That activity is ongoing. We even, as I have said once or twice, we took the step, as they say, where angles fear to tread, and we worked out a joint venture between Puerto Ricans and natives of the Virgin Islands to construct the Federal office building and courthouse there, which was successfully completed.

In one of our regions, region 10, in the Northwest—I am choosing that because there is not a large minority population—approximately 25 percent of our contracts in that particular region, in the construction field, went to minority firms.

But I don't want to just talk about the past. What about now? What are we doing now?

We like to think that we are pioneering a minority subcontracting program which requires that 20 percent of the subcontracts in this region would go to minorities. As of right now, that is working well.

We have awarded about \$20 million on that right now, and we expect in excess of some \$14 million more shortly.

The contracts, the bid conditions that we enter into there, require this. There are things like that going on all over, and in addition to that there is one paper I have here about what we can do by just asking the contractors doing business with us what they are doing, because, when we ask them, then there are certain of them that say, "With your help, we will do quite a bit."

As an example, one firm set up a MESBIC and now has been doing a multi-million-dollar business every year with minority firms.

Thank you very much.

Representative PIKE. Thank you very much, Mr. Mitchell.

Our next panelist will be Deborah Snow, a researcher for the U.S. Commission on Civil Rights.

Ms. Snow, before you proceed, it is probably unfair to raise this issue at this time, but there is something about the heady atmosphere of the Senate Office Building which causes prepared 10-minute speeches to expand, and I would simply suggest to you that, if we are going to get through the panel in time for a question period at all, I would appreciate it if you would do your best to limit your remarks to 10 minutes.

### **STATEMENT OF DEBORAH SNOW, RESEARCHER, U.S. COMMISSION ON CIVIL RIGHTS**

Ms. SNOW. Thank you.

I really appreciate the opportunity to join in this conference today.

Many of you are probably familiar with the report, "Minorities and Women as Government Contractors," which the Commission on Civil Rights published in 1975.

This summer, we had the opportunity to do a little work in trying to update the statistics in the report. That document is not published, but it is available from the Commission. It is just called "Staff Update" to the report.

Overall, the Commission's interest in procurement came about as a result of a series of conferences on economic development for minorities and women in 1972. The Commission's goal was development of a healthy minority and female business community fully integrated with the mainstream economy.

The Commission looks on procurement as a tool for fostering business development for minorities and women. We are very concerned with nondiscriminatory access to procurement dollars, whether at the Federal level or the State and local government level.

But we also are especially interested in using procurement markets to foster business development. We believe this is entirely justified in the light of centuries of exclusion from participation in the economy. To have remedial measures such as special contracting programs is an established national policy over several administrations.

So we don't see much point at this stage in asking whether to have special contracting programs. We have them, and we need to know how to make them effective.

Our interests in problems of data grow out of this basic approach. We are especially interested in having data that we can use to understand what is going on. We are also interested in a variety of data that will allow us to evaluate progress being made to achieve the overall goal of business development. This includes evaluating special programs and participation of agencies as government contractors in achieving this goal.

I would like to share with you a couple of the problems that we have run across as we tried to study minority and female government contractors.

We are in a position basically of being a user of the data that are generated by you.

In the first place, there are problems of data gaps where there absolutely is no information. Of course, the key example of this is contracting by the Federal Government with women. There just is no information.

I will be happy if I hear today that some agencies are now providing that information. In the work we have done in the past, there is nothing anyone can say. It ends up being a closed subject.

When we wrote our report, we had to say, and it was about page 30 of the report, "There is no information about women."

Also, we found an appalling lack of information on subcontracting with minority firms.

DOD had a little information. They weren't sure it was reliable, so we weren't sure it was reliable. So we couldn't talk about that program.

We also found a lack of overall information on procurement. We get very different answers, as Congressman Pike suggested, to the question of, "How much does the Federal Government buy from minorities?"

We get equally different answers to the question, "How much does the Federal Government buy?" No one seems to know.

There are also a number of problems with reliability and comparability of data. We are interested in being able to compare across years and across agencies so that, when we evaluate programs or an agency's performance, we are talking about the same thing.

When we looked at Federal programs, in 1975, we were primarily interested in the 8(a) program, the minority subcontracting program, and the "Buy Indian" program.

We did our own survey with the Federal agencies. The information submitted to us had problems like this; when we asked for direct contracts with minority-owned firms, we got information on contracts awarded by grantees and we got a mixture of information that included data on requirements contracts, and call contracts, and concessions—from GSA—but did not identify those as particular types of procurement.

They told us, in effect, how much they had obligated, but not how much they had spent. It was very, very difficult to reconcile those figures with the other contracting figures.

With respect to the "Buy Indian" program, we were unable to distinguish information supplied by the Bureau of Indian Affairs and the Indian Health Service with commercial firms and their contracts with Indian tribes, or other nonprofit activities.

It turned out the best estimates we could get were something like 85 percent of "Buy Indian" contracts were not-for-profit activities.

Representative PIKE. I am obliged to interrupt you again. It has to do with a vote on the floor of the House at the moment. I must leave.

I would simply like to say to the panelists and the procurement officers and the audience, if we learned nothing else from the Bert Lance hearings recently, we learned that the role of the staff is far more important than the role of either Senators or Members of the House of Representatives.

I would simply suggest to you that you please continue in my absence. I will be back as rapidly as I can get here.

Ms. SNOW. We also found, and I noticed this again yesterday when I was looking through an OMBE report, that among the categories listed for data requested on minority contracting, most agencies reported 8(a) contracts, and a few agencies reported direct contracting and subcontracting.

HUD reported something called "Indirect Procurement." It didn't appear to fit into any other category, but was not explained. This is a problem we ran into again and again, where different kinds of data are reported with no explanation of what is actually being reported.

For the researcher, this kind of lack of comparability and lack of reliability creates serious problems. One is that each researcher must start all over again, which means there is not as much growth in learning as there ought to be in the research done on this.

The other is that no one really knows what is going on. If you read, for example, the OMBE reports published every year, most of the curves are up, but no one knows whether that is true or not. It makes it very, very difficult to set any policy when you don't know where you are, and you have no way of guessing how far you can go if you had an active program.

We are concerned with getting from you, in doing this research, data such as the amount of contracts awarded, the sequence of contracts going to a particular firm, and the share of contracts going to given minority groups and to women.

Overall, we want to be able to talk about the minority and female share of Federal procurement—direct procurement, as well as special program procurement and subcontracting.

When we are evaluating programs, then we get interested in things like sex and racial composition of staffs of agencies, resources devoted to special programs, the whole question of outreach, or finding minority and female contractors, and of how the agency and individual members of its staff work to overcome the inertia of just continuing to use their old system.

There are all kinds of information that we want to have to do our job that we don't have because the procurement system doesn't generate the information.

Let me say with respect to goals that the Commission recommended as a rule of thumb, or a target goal, that within 5 years, which, since the report came out in 1975, means 1980, the Federal Government should be contracting with minorities and female-owned firms in proportion to their representation in the American business community.

That is, for example, if minority males have 5 percent of American business, then the Federal Government should be buying 5 percent of its procurement from firms owned by minority males.

This would similarly apply to subcontracting. We would say that at least 5 percent of subcontracting should go to minority males.

The Commission made this recommendation as an effort to open discussion on the whole question of what are reasonable goals, taken from a broad perspective rather than, say, looking at the volume of contracts in the 8(a) program over the last 5 years, and saying, "Well why don't we increase that by 6 percent?"

We believe that kind of goal setting doesn't give enough attention to the overall problem. It gets too tied to what is happening and doesn't really reflect what is not happening, which is what we are most concerned with.

I wanted also to note that I have heard that many procurement officials believe the reason the Federal Government does not have any information on contracting for women is that regulations do not require it.

We don't think that regulations have to require it. We don't think the regulations prohibit it. But we are willing to call for a change in regulations if that is necessary. We would like to see the commitment to get the data.

We think the changes in regulations or Executive orders or whatever else is necessary will follow.

We believe, and recommended in 1975, and the Commission, I am sure, would reaffirm this today, that there should be uniform data collecting and reporting systems. Developing these systems is within the authority of the Office of Federal Procurement Policy, and we hope to see action on this very soon.

Thank you, I will be happy to answer questions.

Mr. BOLTRUCK. This is Senator Javits. Since he has just arrived, I will introduce the next panelist.

In deference to Mr. Pike's opinion, I have a feeling if there were no Members of Congress here, there would be no staff, either, but it wouldn't work the other way around.

I would like to mention that Mr. Owen Birnbaum of the Office of Federal Procurement Policy was here this morning. However, he was called away at the last moment by his office. A very important matter arose. So we regret that he cannot be with us.

I think the next speaker should be Mr. Allan Stephenson from the Office of Minority Business Enterprise.

**STATEMENT OF ALLAN STEPHENSON, ACTING DEPUTY DIRECTOR  
FOR OPERATIONS, OFFICE OF MINORITY BUSINESS ENTERPRISE**

Mr. STEPHENSON. Thank you, Senator Javits, ladies and gentlemen.

I would like to preface my remarks with just a few comments based on some of the remarks that have gone previously.

There is no question but that there is a serious problem as it relates to minorities and women in the business field.

When we talk about less than 1 percent of the procurement in the Federal Government, what we are really talking about is the inability of the Government to sensitize itself to the problems that are facing the country as they relate to the community, as they relate to anything you want to talk about.

I found through my own involvement in business development, and I have been in it for 17 years, the last 7 years with the Government, that the difficulty with people who make decisions relative to minorities receiving a share of the free enterprise system has to do with their inability to recognize or to translate success with a minority.

They will see a proposal that is very solid, but somehow they cannot translate the solid business deal to the minority business person and see success.

Most of the time we spend a lot of activity dealing with ways of assisting disadvantaged people, and everything is concentrated on their problem. Nobody concentrates on the people who have caused the problem, and I say that something has to happen along that line or we are not going to move down the pike.

A friend of mine told me the other day that the biggest problem we have trying to solve unemployment is that everybody who is trying to solve the problem is employed, and maybe if some of the people who were unemployed were in a position to solve the problem, we might not have the problem.

With that, I will read my statement.

The Office of Minority Business Enterprise was established in March 1969 by Executive Order 11458.

In October of 1971, OMBE's authority and mandate were significantly broadened by Executive Order 11625. This Executive order gave the Secretary of Commerce authority to establish within OMBE a center for the development, collection, summarization and dissemination of information that would be helpful to persons and organizations throughout the Nation that were concerned with the development and promotion of minority businesses.

Now, I said the development, collection, dissemination, but not with the monitoring or enforcement powers to see to it that the information collected is, in fact, accurate and reflects what we would want to see reflected.

Executive Order 11625 also requires the Secretary of Commerce to collect reports and data from other Federal departments and agencies on their minority business enterprise policies and programs.

OMBE has established a data center to carry out the Secretary's responsibility.

The data center collects and summarizes detailed information on assistance provided to minority-owned businesses from our national network of some 250 contractors and grantees.

In addition, the chief of our data center serves on the Interagency Council to Minority Business Enterprise, and he is on a special committee called the Data Committee.

This committee has representatives from approximately 29 departments and agencies. Each member submits annual and semiannual data on their agency's performance in the area of subcontracts, 8(a) contracts, and direct contracts.

These reports are aggregated and provide the basis for our annual and semiannual reports on public and private performance in minority business development.

OMBE requires all of its contractors and grantees to submit a standard form entitled "The Business Assistance Report," which details the type of management or technical assistance minority persons receive.

The information is on a standard form. It includes such things as ethnicity, the recipient's sex, the origin of contract, public or private sector, the amount of the contract, the type of contract, whether it is prime, subcontract, 8(a), et cetera.

I have copies of this form which I will leave for the committee to study at a later date.

Data concerning female-owned minority businesses can be extracted from the OMBE information system. Females are not included in the definition of minority-owned businesses contained in Executive Order 11625, and, therefore, only minority females are included in the data we collect from our contractors and the grantees.

We require our contractors and grantees to include the address, telephone number, social security number, and other information on their reports to us. This gives us the opportunity to do an audit and to do client sampling to verify that the information received is correct.

We also use a standardized form to collect data from the Federal sector, and we use the standard form, hopefully, so that the data we collect from the various agencies is identical.

However, as I mentioned earlier, when dealing with the Federal agencies, we do not collect data on women.

The verification on the data that we collect from the various Federal agencies has not really been deemed necessary. We rely on the integrity of the Under Secretary or the agency official who signs the report. If the information that we are receiving is inaccurate, if it is out of sorts, I guess we need to start looking a little closer at the integrity of the various agencies.

The data that we collect is aggregated by OMBE and includes in the report I referenced earlier. These reports are distributed throughout the Federal sector and made available to the general public by special request, or through published reports.

OMBE uses this data for programing its own plans and evaluations.

I have attempted to define OMBE's business authority and role as the principal Federal agency responsible for collecting and disseminating data on the public and private sector's performance in minority business development.

Now, I will attempt to use the data collected to measure the progress minorities have made in participating in Federal procurement.

Before I begin that, let me just say that while the figures may show a tremendous rise, when you are starting from nothing, almost anything looks good.

I remember recently talking about a company which boasted about how its top management had increased in terms of minorities by 50 percent and I said, "Well, that sounds pretty interesting. How many did you have at the outset?"

He said he had two.

So, statistics can play a funny game.

Beginning in fiscal year 1969 through 1976, direct and indirect government purchases from minority firms increased from \$12.6 million to a figure of \$834.4 million. That is about \$300 million more than, I think, GSA claims, about \$200 million more than SBA claims, but nonetheless represents the combined figures submitted by the various Federal agencies.

These increases represent an upward trend of 0.03 percent in 1969 to 1.53 percent in 1976.

While this looks good, much remains to be done.

For example, total Federal procurement in 1969 was \$48.9 billion. As I said, minorities received \$12.6 million. Total procurement in 1976 is \$54.7 billion. Minorities received \$834 million.

This would suggest that there is room for quite a bit more. It is also interesting to note that out of the universe of 20 Federal departments and agencies, less than half account for approximately 90 percent of the direct and subcontract procurements awarded to minority firms in fiscal year 1976.

So half of these 20 agencies produce something like \$750 million, and the other half produced less than \$100 million.

These same agencies account for 95 percent of all the minority awards under the 8(a) program.

President Carter in his message to the members of the Interagency Council for Minority Business Enterprise instructed all executive departments to work with the Office of Minority Business Enterprise and the Small Business Administration to devise an effective minority business assistance program.

The President also instructed the executive department to double their purchases of goods and services to minority firms, through direct and indirect procurement during the next 2 fiscal years.

Of course, the big question is, when he says "double," is he talking about roughly a billion dollars, \$1.6 billion, or \$1.2 billion?

He also instructed the Office of Federal Procurement Policy to review and revise procurement regulations to assure adequate involvement in minority business firms by requiring that recipients of major Federal contracts to show how they will involve minority businesses before, rather than after, the contract has been awarded.

The last point is this: Title 41, of the Federal Regulations states that contracts over \$500,000 requires best agency efforts to hire minority subcontractors.

Out of \$27 billion in 1976, minorities receive 0.07 percent.

You can move to the next person, thank you.

Representative PIKE. Thank you very much, Mr. Stephenson.

I am delighted to welcome here this morning the distinguished ranking Republican on the Senate side of the Joint Economic Committee, Senator Jacob K. Javits of New York.

I will only say that all the things which I said about Senator Humphrey's dedication to the cause of minority rights, Senator Javits has likewise been renowned for and has fought for during his entire Senate career.

Senator JAVITS, wouldn't you like to say a few words to the panelists and procurement officers?

Senator JAVITS. Thank you so much, Congressman Pike.

First, I would like to express my gratitude to Congressman Pike for moderating the discussion this morning. As you know, Hubert Humphrey, our great hero in this and many other fields, is confined to Minnesota. I am over a barrel with a hearing in the Labor Committee, of which I am the ranking member. In addition, I have just been called to the Foreign Relations Committee, of which I am also a member.

This is a distinguished panel. I myself have had a lot of experience with Dona O'Bannon, who has headed the women's movement with respect to small business, and I express my own appreciation to Frank Kent, Ed Mitchell, Deborah Snow, Allan Stephenson and Joe Kernan.

In my own office, Michelle Babbitt has earned great praise from Hubert Humphrey himself, and if I may, I would like to put that letter in the record here. The letter addresses the research she has done in this field.

Representative PIKE. Without objection.  
[The letter referred to follows:]

CONGRESS OF THE UNITED STATES,  
JOINT ECONOMIC COMMITTEE,  
*Washington, D.C., September 16, 1977.*

HON. JACOB K. JAVITS,  
*Russell Senate Office Building,  
Washington D.C.*

DEAR JACK: The Subcommittee on Economic Growth and Stabilization is sponsoring a conference on "Measuring Progress in Participation by Minority and Female Contractors in Federal Procurement" on September 23, 10:00 a.m., Room 1318 of the Dirksen Senate Office Building.

Though I won't be able to attend, I sincerely hope you can make a brief appearance at the opening session tentatively scheduled to be moderated by Representative Otis G. Pike. Your presence and participation would be especially appropriate given your interest in this area while on the Small Business Committee, and the tremendous assistance your staff member, Michelle Babbitt, has been in offering ideas regarding the conference's design. I expect this conference to be very revealing and informative, and thus an excellent opportunity to responsibly shed light on this issue of urgent importance to Congress.

If you decide to attend, please have your staff contact Richard Boltuck of the JEC staff (4-7944) for further information.

Best wishes.

Sincerely yours,

HUBERT H. HUMPHREY, *Vice Chairman.*

Senator JAVITS. I have read Congressman Pike's opening remarks and I associate myself with them completely.

The two big points are that the statistics are unreliable and shamefully small. If necessary, and I think it is necessary, we must pass further laws to assure an adequate allocation of procurement contracts to minorities and to women.

I need to say nothing further, because Congressman Pike has said it so very well for all of us.

But I would like to emphasize one point: He has expressed the unique nature of this conference under the auspices of the Joint Economic Committee, and I hope you will all take advantage of it.

The fact is that the Joint Economic Committee is the seed bed for many ideas for legislation. Its members are men of considerable influence in other committees where legislation is actually turned out. I would like to assure you that through my own eyes and ears and through Miss Babbitt, who is here, we will pay very strict attention to your thinking.

I pledge my utmost to act on it. I am sure Congressman Pike feels the same way, and will speak for himself.

I hope you will not feel this is just a forensic exercise. This is very serious business. There is a very grave deficiency in this field. The figures are absolutely shameful in terms of the interests which are at stake, and we will do something about them.

You must help us with an intensive participation in this discussion and in giving the full benefit of your ideas, and we will follow through.

Thank you, very much.

Representative PIKE. Thank you.

We do recognize your other heavy commitments, Senator.

Senator JAVITS. Thank you.

Representative PIKE. Our next panelist will be Ms. Dona O'Bannon, president of the National Association of Women Business Owners.

**STATEMENT OF DONA O'BANNON, PRESIDENT, NATIONAL  
ASSOCIATION OF WOMEN BUSINESS OWNERS**

Ms. O'BANNON. Thank you, very much.

Before Senator Javits leaves, I would like to thank him so much.

In 1975, he recognized the needs and interests of the woman entrepreneur and sponsored hearings in the Small Business Committee when he was ranking Republican.

In New York City, beginning on Monday, there will be the Women in Business Week, sponsored by our affiliate, the New York Association of Women Business Owners, and private businesses in the city.

Thank you very much.

Here we are, the women. Women do comprise over half the population, but a very, very small percentage of the businesses.

I know what you are looking for. You are looking for the best contracts at the cheapest price to do your work the way you are supposed to do it, and we want to do that, too. We want to help you.

The National Association of Women Business Owners is not seeking quotas, we are not seeking percentages, we don't want a cut of the pie that minorities already have now and deserve.

We just want to be on your list, to be able to compete competitively and come out winning as we frequently do.

We have had a great deal more success in the private sector to date than we have in the public sector.

I think a lot of it is just lack of credibility on behalf of contracting officers in the public sector. Our association represents all ages, all religions, all races, and all professions.

Women are usually found in the service industry because, historically, we have had some problems obtaining credit.

We have had problems similar to minorities added to the problem of our sex.

We have heard all day that there are no statistics for women. That is true. There are none. We ourselves are trying to get data to provide to you.

Yet we are getting very little cooperation from several Federal Government departments, which we believe should be the leaders.

We do believe that contractors ought to be accountable for not only their minority participation for their subs, or for any direct contract you may let, but for their subcontractors.

There is already recognition, both in statute and by many private corporations to incorporate women entrepreneurs in the business.

The Railroad Revitalization Regulatory Reform Act of 1976 denoted women as minorities for the first time. We are not seeking this as a general category. We are performing now. We are finding women can provide goods and services to the railroads, and if we can do it for the railroads, we can do it for anyone.

The Alyeska Oil Pipeline Co. contracted with women business owners who have been very successful.

The Alcan pipeline, which is now undergoing congressional scrutiny, and which has been selected by the President, both in statute and in concept is ready, willing, and able to contract with all minority and women contractors.

The 1975 report by the Civil Rights Commission that Ms. Snow has referred to before, and which the Secretary of Commerce quoted several months ago, states less than 1 percent of more that \$130 billion spent by Federal, State, and local governments for procurement went to blacks and women.

I would like to know what percentage went to women. The Department of Commerce study, jointly conducted by OMBE and the Census Bureau, published in 1976, but based on 1972 statistics, indicated there were about 400,000 women in businesses.

They rated less than half of 1 percent of all revenues received by American businesses generally. That was in 1972. How many women were using initials then and still do, and how many husband and wife teams were listed as male only, and still are?

Esmark, the marketing firm in Chicago, recently stated there are about a million women in firms. I don't know how many women-owned firms there are. We are now seeking through private sources to compile a directory of women-owned businesses in the United States to obtain this data.

The Equitable Life Assurance Society of the United States, one of our largest insurance companies, wanted independently to increase their vendor program to include all women. They wanted to do it in 1975. They wanted to do it in 1976.

They came to the Federal Government, which is the logical repository for a lot of this information. There were no statistics—anywhere. They came to our organization, which was then a fledgling group of 75 members, and said, "Can you put together a directory?"

With our normal confidence, we said, "Of course," and within 3 months we found 1,140 businesses in the Washington-Baltimore area and published this directory. If we can do it in 4 months with a small amount of money, what can you do with the billions and billions of dollars for Federal procurement?

We are now corresponding with a private consortium of businesses, to put together a directory of women-owned firms and would welcome Federal participation.

There are several new programs and commitments by the Federal Government which I personally welcome. The first is the Small Business Administration's new campaign under the new Administrator, to increase participation through their seminars and through their programs to more women-owned businesses.

This began last year under the previous administration, with Barbara Dunn being named the advocate for women at the SBA. I personally feel that there is a much greater commitment by the Small Business Administration to at least provide technical assistance and advice to women.

The most exciting thing going on now is the task force on women-owned businesses which was formed by the President on August 4. It is now in the process of being formed, and some representatives, I understand, have been named.

This task force, named by the President and led by the Department of Commerce, is just going to look at what, if anything, the Federal Government can and should do to increase participation in the Federal procurement process for women-owned businesses.

We may find that there is nothing left to be done. That could be a very real possibility, because there are no statistics. We may find that there is a lot to be done. We will find that out.

There are attitudinal barriers that I think you all recognize. I do know they exist.

There are cataloging barriers. I would like to know how many Federal contractors have been cited for not using minorities, for not trying to use women.

I know that there are some government agencies on their own that have decided to seek out women entrepreneurs and to ask their prime contractors in the multi-million-dollar figures to seek out women-owned businesses.

The nonenforcement is blatant.

I look at the Defense Department and all of the money that is spent. I know that there are no statistics as to where a lot of it goes. I think that is going to be changing, and we really look to you for help and assistance.

As far as the small business 8(a) set-aside program is concerned there has been a question as to whether women business owners are socially and economically disadvantaged as a class.

That is very difficult for me to answer.

I believe that some nonminority women probably are.

As a personal test case, I could say that I went through the public school system and the college system in our country, and never thought of going into business, because I didn't think I could do it. Today, I am very happy to say that I evidently can, and I am very pleased to say that I am doing it successfully.

I don't know that this will apply to all women in business.

Women frequently don't have the basic business background that many men do receive.

I do know within the SBA that nonminority women have been classified for 8(a) set-asides.

They have had to prove their case with great difficulty. I think one of the things that needs to be done is to have criteria set with respect to the 8(a) program.

Are women business owners capable of fulfilling Federal contracts? You bet. We are doing it now with the railroads.

Women have roofing firms; they have industrial chemical firms, which are competitive with Dow Chemical. They have construction firms all over this country. Sure, they are in the service industries, but they are providing million-dollar services and more to some of the largest companies in this country. They are representing 500 companies all over this country. Why can't they get better access to Federal procurement?

I can see from some of the looks that you might be thinking, "Why don't you come and get them?"

Well, we are. We are going to be coming to you, and we are going to be asking, but we don't expect anything special. We want to be

treated fairly. We don't want to be treated in a demeaning fashion, and we simply want information as to the contracting procedure and equal access to Federal dollars.

I think, when we finish our contract with the Federal Railroad Administration that we will have provided solid contracts and goods and services to the railroad industry.

If we can do it for the railroads, as I said before, we can do it for Defense contractors, NASA contractors, Agriculture, Interior, and all others.

So, we are here. There is going to be a new and continuing awareness of women business owners. We want to work with you. We are not going to attack anybody.

We don't have anything to attack with now. Help us compile the figures, and we will try to work with you and we will try to do it independently and on private enterprise money.

Thank you.

Representative PIKE. Thank you, Ms. O'Bannon.

I think what you are saying is help us compile the figures that we can use to attack you. [Laughter.]

Ms. O'BANNON. I think that can be a fair statement.

Representative PIKE. I am not disagreeing with you.

Ms. O'BANNON. It may be that by the time the figures are compiled, we won't have anything to attack.

Representative PIKE. It is possible, but I doubt it very, very much.

Our final panelist this morning is Mr. Joseph Kernan, whom I introduced earlier.

Please, Mr. Kernan, go ahead.

**STATEMENT OF JOSEPH KERNAN, CHIEF OF THE PROGRAM SUPPORT DIVISION, OFFICE OF BUSINESS DEVELOPMENT, SMALL BUSINESS ADMINISTRATION**

Mr. KERNAN. Thank you, Congressman. Mr. Smith, whom I am sitting in for this morning, wished to express his gratitude to you and Senator Humphrey for the opportunity to be here.

I will make my remarks brief, because fortunately all of my colleagues on the panel spoke about the 8(a) program and for clarification, the Office of Business Development is charged with the responsibility for the conduct of the 8(a) program.

In the news release I know that it was pointed out that 8(a) has been in the spotlight as the result of some recent hearings, and as a matter of information, Administrator Weaver has appointed his deputy to have a blue ribbon review board and panel reevaluate and revamp or make possible suggestions for revamping the 8(a) program.

So, in that respect this conference we are at today comes at a very appropriate time, and certainly Deputy Administrator Patricia Cloherty would be happy to have the transcript of this conference for presentation to her review board.

At the present time, to give you an idea as to the scope of the 8(a) program, it would appear that this year it will be somewhere short of one-half a billion dollars.

At the end of the month of August, the figures totaled \$417 million in contracts funneled through the SBA by our sister agencies to companies owned, operated, and controlled by socially or economically disadvantaged persons.

So with that, I will conclude my remarks, Congressman Pike, and be ready for any questions.

Representative PIKE. At this point, I would like to pretty much throw this open to questions to the panel from any of the procurement people who are here, but before doing so, I would like to know whether any of the members of the panel themselves strongly disagree with anything that anybody else on the panel has said, and would like to tee off at anybody else on the panel.

This has been very dull so far, and it seems to me if anybody feels strongly that anybody else on the panel has said something with which they strongly disagree, this might be a good time to say so.

Ms. O'BANNON. I don't. I think we are ready for the attack from the audience.

Representative PIKE. Let me start, not with an attack, but with—I guess it is a political type inquiry—and I will address it to the two ladies on the panel, and my question simply is this: As a matter of political judgment, if we try to expand the concept of 8(a) to include as a matter of course women owned or operated businesses, don't you think that we are going to dilute the effort toward ethnic minorities?

Ms. SNOW. Congressman Pike, I don't think it is necessary to dilute the effort toward ethnic and racial minorities, for example, in the 8(a) program.

The Commission strongly believes, and has recommended before, and would no doubt do so again, that women should be included in the "socially or economically disadvantaged" group for the purpose of participating in these programs.

We also have recommended that the resources allocated to these programs be expanded. If you only increase the number of people entitled to participate, everyone is going to get less, unless you increase the funds.

Representative PIKE. Do you advocate a larger set-aside, and that women in business be included?

Ms. SNOW. Yes. It may turn out that legislation is necessary, because, as you know, SBA has not taken that step.

Representative PIKE. I would like to hear from Mr. Kent on the same subject.

Mr. KENT. I certainly am an advocate of women being included in the 8(a) set-aside program.

I would, Congressman, be interested in some statistics on what happened when women were included in the antidiscrimination laws as they relate to business in particular. I think we would have to go to private enterprise and find out what happened in private enterprise when antidiscrimination laws were expanded and the efforts were made to include women.

Were efforts diluted at that point? I think that might give us some feel for what might happen in this case. I don't really know, but I would suspect that it probably did not dilute it that much.

Representative PIKE. I am going to ask one last question—

Ms. O'BANNON. Could I comment on that?

Representative PIKE. Yes, I wish you would.

Ms. O'BANNON. As far as the 8(a) program, we do not think it is necessarily an objective to have women in business as a class included in 8(a).

We believe if there are objective standards set for those who are socially disadvantaged that all businesses will have the same opportunity to qualify.

There are now nonminority women business owners classified and qualified for 8(a) set-asides. I think you have to look into the 8(a) program and see the repetitiveness of the loans, as frequently there is repetitiveness of loans to minorities in the procurement process, and you will find that the pie is not really being divided as you think now.

I think politically it will be a pretty hot question.

Representative PIKE. Politically is where I live.

Ms. O'BANNON. That is right.

Representative PIKE. I guarantee you that the problem is that it is not one constituency, but several.

Ms. O'BANNON. That is what I mean, if categories were set—

Representative PIKE. I could not agree with you more. I asked at the beginning where do we define in the law what a minority business is, and what kind of definitions do we have.

I will now go to Mr. Kernan and ask two questions.

One, why are statistics so miserable, to use a nice, nonemotional word, and, two, aren't your basic statutes and your own regulations couched in such nonspecific and mushy language that you have a little trouble—you may have all the flexibility in the world—but don't you have a little trouble deciding what is and what is not a proper 8(a) case?

Mr. KERNAN. Yes, sir. In some cases, it is almost as difficult as how many angels can dance on the head of a pin.

In regard to the law, specifically, the Small Business Act of 1953, from whence section 8(a) came, I believe the legislative history would indicate that section 8(a) was put in there as a carryover from the Small Defense Plants Act.

It was probably intended to use it in the event of war for mobilization of small business.

It was not until some time in 1968 that this particular section of the act was utilized for socioeconomic reasons.

So, therefore, the law itself does not contain language that would be definitive in any respect regarding eligibility. As the program developed from 1968 until today, the language that was used, Congressman, as I recall, was gleaned from some of the language of the Economic Opportunity Act of 1965.

So that the operating regulations and procedures now use the terms "social or economic disadvantage," and the modifiers might be described as being "chronic and historic," and then further than that, as a result of the GAO study, it requested the Small Business Administration define the connection between this demonstrable social or economic disadvantage and the inability to compete effectively in the marketplace.

So, that is where we stand today as far as our language, it is highly judgmental, and it is difficult to arrive at some of these judgments.

Representative PIKE. That answers half my question.

It is so judgmental that what you really get down to is if a procurement officer wants to, he can, and if he doesn't want to, there is nothing that can make him?

Mr. KERNAN. The judgment on the eligibility and the approval of the company for participation in the 8(a) program is made by the Small Business Administration.

Representative PIKE. Whoever makes the judgment, if he wants to, he can, and if he doesn't want to, there is nothing that can make him.

Mr. KERNAN. That is correct, sir.

It is made and reviewed in committee. We try to make it from an operating standpoint as fair and objective as possible.

Representative PIKE. The other half of my question had to do with statistics. Why are they so at variance with one another.

Mr. KERNAN. I can just speak to the 8(a) program, and I will answer in this respect, that because these are Federal contracts and subject to scrutiny, they are minutely accurate in the 8(a) program. I think you will find the statistics available in the 8(a) program would be second to none as far as accuracy, because each of them represents the aggregate of each government contract from our sister agencies.

I think they are very accurate, Congressman, and at the end of last month, I think it was \$417 million this fiscal year.

We do not have in our computer system the capability of drawing out contracts awarded to companies owned by females. We do not have that capability, but as far as the aggregate statistics, I state they are as perfect as they could be.

Representative PIKE. Mr. Mitchell, does GSA have a computer?

Mr. MITCHELL. Yes, sir.

Representative PIKE. You talked about the difficulty you have in coming in with these statistics on minority contracting.

Mr. MITCHELL. A number of years ago when I was working with this intimately, the report by contracting officers within the Federal Government was submitted to the Department of Labor, and that was the source from which you attempted to get total figures for the Federal Government.

We have within GSA certain computer support for the various services that we have, but when you start to talk to the total Federal Government that is where you get into various difficulties.

It has been difficult identifying the contractors in the 39 industries I monitor. I have gone to various sources, to Dun & Bradstreet, to get that and to be very specific, sir, for a myriad number of reasons I have not received an acceptable report yet from last September—1 year ago—even on a contract that is paid for.

So, I am not using that as an excuse. I am saying when you take the complete effort—even in the private sector, with all the reports that are currently required by government—you find out that the reports do not balance.

Representative PIKE. I have talked too much, but I would just suggest that sometimes it is easier to get the statistics on a contract which has not yet been paid for than perhaps on a contract which has been.

Mr. BOYD. I am Willie Boyd, a member of HEW. I work very closely with some analysis. I expect both sets of figures may be correct.

We are required to submit reports on minority business procurement to OMBE. OMBE gets its 8(a) dollars from SBA and OMBE reports on 8(a) and non-8(a) contracts awarded to minority firms.

So, that may be the difference.

Representative PIKE. Yes, sir?

Would you please start by giving your name and your position so that we can have it for the record.

Mr. JOHNSON. Jerry Johnson, chief of procurement from the State Department.

I think one of the big problems in getting statistics particularly on female firms is because there has been no requirement for any agency to collect the data.

If we don't have it categorized at the time you start to put a contract into a data file someplace, it is impossible to retrieve it without doing a whole research project, and most procurement offices are short-staffed.

If SBA or OMBE or someone who had need for information on female firms and minority firms would request such, we naturally would start to develop that information.

I think that is the cause of why there is no information. Nobody has required it in the past.

Mr. GORDON. Arthur Gordon, deputy for procurement in the Air Force.

In the Air Force, we find that about 1 percent of our contract awards represents about 90 percent of the dollars obligated.

We find that most of our contracts are awarded to some 5,000 contractors and corporations.

We know of no way in a corporation which is publicly held, where you have stockholders, to discern particularly when the very stock held in trusts and so forth, the individual ownership of a corporation.

It is very hard in dealing with a Lockheed——

Representative PIKE. Oh, yes, but there is a difference between stock ownership and management.

You can look at who the president of the corporation is, and who the vice president of the corporation is, and you get a pretty fair idea whether they are minority or not.

Mr. GORDON. Whether they are minority managed or owned. I am talking primarily about women.

Ms. O'BANNON. That would not apply in defense contracting.

Women-owned businesses are cognizant of the fact that you have difficulty being the prime out of DOD.

What you do is find out what large corporations can do with respect to subcontracting. This was done on the Alyeska pipeline, and if you required it to be done, it would be done.

Mr. GORDON. I am saying that for the purposes of reporting it is very hard when dealing with corporations to discern whether a corporation is a woman-owned corporation or a male-owned corporation.

It is very hard to discern, because you have stockholders, and we don't know when we deal with a corporation what percentage of the stockholders are female or male.

In dealing with individual proprietorships, or in dealing with companies that certify they are minority concerns, we can compile such

statistics, but in dealing with corporations, where ownership is decided by majority stock ownership, it is very hard to distinguish between one corporation and another.

Ms. O'BANNON. Do you ask your primes to distinguish as far as their subs with regard to minorities?

Don't you have that requirement?

Mr. GORDON. Yes.

Ms. O'BANNON. Therefore, you must have a requirement to break it down by female and male minorities?

Mr. GORDON. No.

Ms. O'BANNON. That is the thing. I understand that. There is no way to go back and redo the systems. You can start doing them today.

Representative PIKE. This is more like it.

Yes.

Mr. MARTINO. Roger Martino from the Department of Transportation.

I think we are hitting on the point that we need an accurate definition of what is a female-owned firm before we are going to be able to collect any data at all, and what we need to do once we get this definition agreed to, if indeed we decide we are going to collect the data, we have to have the contract clauses, and in these clauses we have to put that kind of definition so that the contractors that we are working with know how to report the data back to us.

Only in that way will we be able to collect any kind of data that is meaningful.

Ms. O'BANNON. DOT is doing a great job now, especially since we have a contract with them. But one of the things that we are finding is that as we are pulling together all of the information, and as we are finding women business owners—and this applies to other minorities as designated in section 906—we are ready to feed them into a computer base, and DOT doesn't have it.

There are SBA qualifications of 50 percent ownership of women-owned businesses to qualify for participation under some programs.

Representative PIKE. Ms. O'Bannon, wouldn't you have to concede that A.T. & T. for example, is probably a women-owned business?

Ms. O'BANNON. Well, A.T. & T. is also one of the corporations that strongly sponsors the association. Yes, and in a lot of cases stock is held in the woman's name. Women are not in the top management.

Representative PIKE. I agree with you, but I think a legitimate point has been raised. When you get around to defining ownership, I don't know how in the case of a corporation you can ignore stock ownership, and considering where the stock is owned in America today, I think you are going to find a tremendous amount of women-owned contractors.

Ms. O'BANNON. Well, we provide in order for contracting, both with our association and in the validating process that we have to go through to make sure that women are not serving as fronts, that they not only own it, but that they manage it and have day-to-day management responsibility for it.

As you may well understand, it is a very difficult thing, but we are dealing, also, with small businesses. It is true that Lockheed could possibly be female owned in their ownership, but they are being run by males.

Mr. VOGEL. Clifford Vogel from FAA.

Are you saying in effect that you are not considering stock ownership to be the definition of a minority firm?

I don't believe there is any further definition of public stock ownership attached to that. In other words, your definition, then, is somewhat different.

Ms. O'BANNON. Yes, it is, because we very frequently found that the ownership, per se, is not.

But, when you are dealing with Fortune 500 companies, that is not really what we are talking about.

If you at the FAA wanted to contract with someone, we are dealing mainly in the small business field, because that is where a lot of the women businesses are and where a lot of minority businesses are.

But, if you wanted to note it as ownership, you may very well find that some of your large corporations are women owned. Guidelines need to be set. I also believe it would be too expensive and certainly not sensible at all to ask you to go back and find your women-owned firms that you may have contracted with, but it is certainly something you can do from today on.

Mr. VOGEL. I would just like to know on this point if I may that I am not so sure that I would find that A.T. & T. is women owned. I think you might find it is owned by large institutions, universities and insurance companies and so forth.

I may be wrong about that. I know a lot of people believe this.

I think Lockheed may be a women-owned corporation, but that is beside the point. The point Mr. Kent made is that we are really talking about small businesses when we talk about minorities and females.

For the most part, if you're referring to the data that OMBE and Census published a couple of years ago on firms owned by women, you are talking about microscopic businesses when you talk about the whole, I mean really small though there are some that are larger.

As to whether Lockheed is female owned or not, we can worry about that we take care of small businesses.

Mr. GOLDBERG. Herb Goldberg, Department of Labor. I have met with some of the women's groups and some of them have been very upset about having women counted as an 8(a) firm or special deals under the Small Business Act, because they feel that many businesses are husband and wife combinations, and instead of the husband being in the forefront, the wife, then, will have the name on the door and all of a sudden she is active in management, and then she will be getting a set-aside to the detriment of other organizations where the husband stays in the forefront of the business.

Ms. O'BANNON. That is why our organization is not advocating that women-owned businesses be part of 8(a).

I recently had a man call me from Upstate New York and he had heard about a grant the association had, and he had gotten my phone number.

He was very excited to tell me he had a firm that would fit in very, very well, and he would be glad to switch the stock over to his wife's name.

We told him that he was just the type of person that we weren't interested in at all.

But, I know your problem, and I agree thoroughly that this is a problem. It has been a problem with 8(a).

I was personally very sorry to see the whole 8(a) program stopped temporarily in the Senate hearing. There are going to be abuses.

Together, we need to find some way of keeping those abuses to a miniscule amount because that is a very convenient way to do it.

So, we need to work on guidelines, administratively, legislatively, and whatever might be necessary.

Mr. GOLDBERG. If you do, the problem will be so tremendous.

Ms. O'BANNON. Do you think it will be?

Mr. GOLDBERG. I know my family and in-laws, there is a husband and wife business.

Ms. O'BANNON. But they each own it equally?

Mr. GOLDBERG. Everything is in the wife's name for tax purposes.

Ms. O'BANNON. That is why the wealth of the country is supposed to belong to women. I say that is not true.

Mr. GOLDBERG. To have a set-aside for women one way or the other, it can be so difficult to handle, and the administrative problems can be fantastic that the overhead will drive us to the grave.

Ms. O'BANNON. Didn't you have the same questions with minority persons?

Mr. GOLDBERG. Can you look at a black man and tell he is black—

Representative PIKE. You are not suggesting that you cannot look at a woman and tell that she is female? [Laughter.]

Mr. GOLDBERG. No, but when it comes to negotiation, it cannot so much be the wife rather than the husband.

Ms. SNOW. I think this is a problem that SBA might comment on. I would like to say that if the policy change we are interested in were made—to say that women as a group are socially or economically disadvantaged for the purpose of participating in these programs—this is not to say that any woman automatically gets a contract.

It never meant that every minority-owned firm got an 8(a) contract.

SBA still has to make judgments, and one of the judgments it has to make is whether those individuals or firms are, in fact, socially or economically disadvantaged.

You are saying, "There are going to be huge problems in doing this, and therefore we shouldn't do it."

"Men will abuse it, so we don't do it for women."

Mr. GOLDBERG. How do you figure they participate? They didn't go to college, or high school, and their parents didn't have the money.

What makes them disadvantaged? The fact that they have to have children?

Ms. O'BANNON. We don't have to have children in the first place. That is a typically sexist comment we come up against.

It is also illegal to ask, I might note. I think we can deal with these subjects frivolously, but they truly are not frivolous issues.

If you have a contract, and if you have someone in for an oral presentation and the woman side of the husband and wife team comes in, if the woman doesn't make a convincing case, if she cannot support her contract, then you are not going to award it to her.

You may be charged with discrimination, but you can back it up. If you do it in a factual way, I don't think it is a problem.

Many of our business owners don't even want to deal with the Government, because it is so difficult not only to get the contract, but the money, and frequently small businesses go out of business dealing with the Government.

Representative PIKE. Mr. Mitchell.

Mr. MITCHELL. I would like to make a comment, because during my initial remarks I made a statement that we had been doing a test project in this area that had been very successful.

The many comments I have heard here, particularly on the difficulty of defining who is disadvantaged and that sort of thing, were faced prior to the time we instituted this test.

We have had quite a bit of success. We think it is working.

Within a particular part of that appendix to the bid conditions, we faced all the problems. We have said who was disadvantaged, for purposes of the particular contract, for a given major construction project, we gave definitions and actions to be taken.

We went through all the bureaucratic gobbledygook with all the legal people, too, to see if we could be hung as high as a kite to do this.

We have thus far been able to make it stick, and as I stated, it is in operation. It has gone over \$20 million to minority and female firms, and by a conservative estimate in the next few months it will go \$12 million more.

In working in contract compliance with many industries, these questions of how do you define disadvantaged and so on continually come up.

We Americans have a system that is basic, and I won't go into it, that talks about probabilities, and we use certain mathematical means to say that when something is totally improbable unless it is deliberately done that way, well, it is very easy to show that the percentages, the part that women and minorities play in enterprise, was totally improbable if it were not deliberately done.

That is what we are trying to change.

Representative PIKE. As a legislator, I would simply have to say if I were asked to legislate the fact that because they were women they were disadvantaged, I would have great difficulty doing so.

I don't think that I could legislate anything that says that because they were women they automatically qualified as disadvantaged.

Mr. Stephenson.

Mr. STEPHENSON. If we were to look at the universe of small business and make a comparison of how all small businesses are doing compared to what minority small businesses are doing and women-owned small businesses, you begin to understand the discrimination.

The simple fact is that unless you are in business with your husband and it is recognized as a male-owned business, you don't have a problem, but if you recognize your business is a female-owned business, the gross receipts drop so dramatically it is unbelievable.

Obviously, there is a problem, because the services aren't any less.

We are talking about small businesses, and not major corporations. When women show themselves as business people, they are discriminated against, and I think that is what the fight is about.

Mr. JOHNSON. Jerry Johnson from the State Department. I would like to take it from my observation as a procurement officer who generally stands between my user and my client, the small business,

the woman who comes in to make that sales pitch, that presentation, and I would have to agree with Mr. Stephenson that both categories of minorities, and women, when coming in to make a technical presentation, to try to sell their credibility, I have to live with both sides of the house.

When I award a contract, my agency looks at me and says, "Why did you award it to that firm when we don't think he can perform?"

It happens with small businesses. It happens with minority businesses and it happens with women.

We have a problem of selling credibility, and the changing social consciousness, and it is a problem of continuing to reinforce these people's ability to perform.

I think most procurement officers probably get caught in the middle. They don't have a particular problem, but our users do.

You get the defense industry complex, and I mean no offense, Mr. Gordon, but the concept is that the big businessmen can successfully perform this job like nobody else can, and I think we all know that isn't so.

But there is the root of the problem.

Representative PIKE. Mr. Kent, you can proceed in a minute, but you will have to do it in my absence.

I want to say that I will not be back from this one.

The assignment sheet for after lunch is completed, and available. I thank the panel very sincerely for what has turned into, I think, a pretty good discussion, and I have learned something, and I am quite hopeful that working together we can achieve some relief in what I think we all mutually can recognize as serious problem areas.

I want to thank all for your participation.

Mr. KENT. I wanted to underscore what was just said by the gentleman from the State Department. During the time that I was in the Federal Government with the Office of Economic Opportunity, we did our best to try to promote 8(a) set-asides through the agency, and we assumed that the Office of Economic Opportunity, being socially minded, would be a leader in this arena.

Yet, when we proposed that a VISTA training contract be set aside for a minority firm through 8(a), why, we couldn't do *that*, because, as everyone knows, minority firms aren't *qualified*, and you know they can't do the job, et cetera, et cetera. People who were supposed to be dedicated in this area were using these excuses.

They were supposed to be knowledgeable and have a feel for the problems.

I say all that because in my original remarks I indicated that, to me, one of the key problems is getting people to believe that minorities and women can actually perform, and see this as a venture in American free enterprise and not as a part of welfarism.

That, to me, is really one of the great difficulties, and something which I think that procurement people are going to have to tackle head on, particularly people in key agencies.

Mr. BOLTUCK. I think we have time for one more question from participants in the audience section, if there are any.

Ms. O'BANNON. I would like to ask one question. The idea of credibility really does come up an awful lot with women. I am sure you are aware of it, as men, those of you in the audience who are, but

I want to ask that as procurement officers, how many of you really—and I guess you can't have a show of hands—would doubt that women can perform on contracts, whether they be service or hardware, if you have a company that has been in business, say, and let's take, for example, a roofing firm, hardware, that has been in business for 10 years.

It has a good business, has never defaulted on a contract, has been in the private sector, comes in and gets bonding, et cetera.

You have a similar firm, maybe nonminority male owned, and you have to weigh these factors.

How many would probably feel the woman could not perform the contract, even though she had a business, had perhaps established it, or had inherited it?

How many of you would think she could perform on that contract?

Mr. LUHTANEN. My name is Luhtanen. I think it is not a case of procurement personnel saying that you, a firm, could not perform that job.

We are talking about small business set-asides, we have talked about 8(a), about minority procurements. We have program people who consistently, over 150 years, say, "Gee, not my programs, please, not mine, try somebody else's."

This is what the procurement people have to combat. There is no question on our part that you could perform.

Mr. BOLTUCK. Okay, if no one has further comments, at this time I would like to thank everyone for attending the opening session.

There will be three afternoon sessions, and I have a couple of announcements.

First, would any of the officials who have brought statements in response to the subcommittee's request place them on the front table for the benefit of fellow participants and staff and others attending, but reserve a few copies. I think the best thing to do would be to have you mail them to the subcommittee to make sure we get them.

In addition, the lists dividing you into three groups are ready—and we have tried to be equitable about it—we have tried to keep representatives from one department in one room. We may have omitted some people inadvertently. The list will be available outside the room as you leave.

You should pick up a copy. We are hoping to reconvene the conference in the three rooms listed on the sheet that you will pick up at approximately one o'clock or a quarter after one. That will give you about an hour for lunch.

We have received permission to use the south cafeteria in this building, so you may take any elevator to the basement, preferably the elevators on that side of the building, which is the south side.

Again, thank you very much and good luck.

[Whereupon, at 12:08 p.m., the conference adjourned.]



### III. APPENDIX

#### CONFERENCE QUESTIONS

Please respond to the following questions in your prepared statement and summary. Use whatever format you desire. The agenda prepared by the discussion leaders will be sent under separate cover. Thank you.

(1) Please specify the type and form of data your agency compiles and processes on contracts awarded to minority and female owned firms. To whom do your report your findings and in response to what statutory or regulatory requirements? Which of your data are generally available to the public upon request, and which are not?

(2) What is your assessment of the quality of various aggregate data you regularly maintain? On a scale of 1 to 10, with 1 representing a total lack of confidence, rate the reliability, in your judgment, of the various data you process on minority and female shares of contracting and subcontracting originating with your agency.

(3) To the best of your knowledge, are data you report to other agencies of consistent quality and sufficient uniformity of definitions to permit useful aggregation with other such government-wide data? Please identify where incongruencies exist.

(4) If asked, could you develop statistics portraying the shares of contracts issued to minority and female-owned firms and the shares of subcontracts issued by your prime contractors to such firms? If so, how costly and time-consuming would the data processing for such an exercise be (estimate)?

(5) Does your agency consider women, as a class, among those likely to be "socially and economically disadvantaged" for the purposes of the Small Business Act of 1953?

(6) What suggestions do you have regarding establishment of uniform government-wide contractor reporting, recordkeeping, and retrieval standards to facilitate availability of trend data on minority and female contracting?

(7) What is your policy, and what objective criteria do you use, to determine what reports you require of which prime contractors regarding subcontracts they enter in fulfillment of their contracts? Do you synthesize, in any cases, minority or female shares of subcontract dollar volume? Are such procedures, such as pro rata application of corporation subcontracting ratios, reasonably accurate methodologically?

(8) What objective standards do you apply to identify suspected abuse of non-competitively awarded minority or female set asides? Are some such standards unique to your agency? Can you suggest others which could be adopted in management control of such contract awards throughout the government?

(9) Does your agency make an effort to break-up contract specifications in ways likely to maximize the prospect of minority firms' qualifying? How do you select contracts to be offered through Section 8(a) subcontracts of the Small Business Administration (SBA)? In your experience, have procurement needs filled through 8(a) subcontracts been processed in as timely a manner as competitively offered contracts? What other problems, if any, have you had coordinating with the Office of Business Development of the SBA?

(10) What difficulties, if any, has your agency encountered in the performance of minority or female contractors? Please cite examples without implicating particular companies or individuals.

(11) Has your agency attempted to use innovative approaches to expand participation by minority or female firms? Do you have ideas you could implement if not impeded by certain laws, regulations, or judicial decisions? Do you plan to utilize new approaches in the near future? What ideas might be of general benefit to your colleagues in their efforts? Please be specific.

(12) If you require bonding of firms awarded noncompetitive minority contracts, is the requirement internally generated, or a product of statute or regulation?

(13) If you know, could you breakdown the dollar volume of contracts awarded by:

- (a) Competitive and non-competitive awarding;
- (b) Minority and female contractors; and
- (c) Size of firm.

## DEPARTMENT OF LABOR RESPONSE

## RESPONSE TO CONFERENCE QUESTIONS

(1) DOL reports semi-annually to Office of Minority Business Enterprise, Department of Commerce, (OMBE), contracts awarded to minority-owned firms. The statistics are broken down by 8(a) awards and prime awards and subcontracts awarded by majority firms. This report is requested under Executive Order 11625.

DOL also reports 8(a) awards semi-annually to the General Services Administration (GSA). This report is requested under 41 CFR 1-16.

This data is available to the public upon request. No data is maintained on female-owned firms.

(2) The assessment of the quality of data on a 1-10 scale is 8 for the statistics on prime awards to minority-owned firms and 5 for statistics on subcontracts awarded to minority firms.

(3) To the best of my knowledge our data is of consistent quality and sufficient uniformity of definitions to permit useful aggregation with other Government-wide data.

(4) The Department of Labor could develop statistics on prime and subcontract awards to minority-owned firms. The Department does not maintain any statistics on female-owned firms. There is no way to develop statistics on female-owned firms unless each and every firm that has received a contract is queried concerning the sex of its principals. Even if the staff was available, we doubt whether any replies would be received. However, for estimating purposes \$120,000 would be needed to gather statistics on female-owned firms.

(5) We do not consider women, as a class, to be socially and economically disadvantaged for the purposes of the Small Business Act of 1953.

(6) There is no need to duplicate for female-owned firms, the current OMBE and GSA system for minority-owned firms.

(7) The Department of Labor follows the Federal Procurement Regulations and requires those contractors, with contracts in excess of \$500,000 that offer potential subcontracting to report on subcontract awards. We do not synthesize minority or female shares of the subcontract dollar volume.

(8) The Department of Labor sets-aside contracts pursuant to Section 8(a) of the Small Business Act. The Small Business Administration is requested to vouch for any firms that claim 8(a) status. We do not believe that we have dealt with any firm that has abused the process. The Department does not have any formal standards to identify suspected abuse of 8(a) set-asides.

(9) The Department of Labor procurements do not lend themselves to a breakup of contract specifications. All supplies and equipment are usually obtained from GSA supply sources.

Contracts are selected to be offered to the 8(a) process as follows:

The contracting officer(s) and the program officer(s) review requirements as they are formalized and ascertain through Department records or SBA whether or not qualified 8(a) firms are available for the work. Unfortunately most DOL procurement from non-GSA sources is either for Job Corps Centers or research. Job Corps Centers are difficult procurements through the 8(a) process and DOL researchers tend towards established university or non-profit research establishments.

Procurements processed through the 8(a) procedure with SBA are experiencing delays. SBA does not appear to have the staff to adequately service the agencies' needs.

(10) Problems tend towards performance difficulties brought on by weak capital structures.

(11) Because the problems tend to be under capitalization, DOL expedites the voucher payment process to assure a regular cash flow. Assistance has also been rendered in the obtaining of bank credit. We do not know of any restrictions of a regulatory, statutory or judicial nature which impedes our giving assistance to 8(a) firms.

(12) DOL does not require bonding of its 8(a) firms.

(13) (a) Competitive/noncompetitive—not available.

(b) Fiscal year 1976 minority awards (includes transitional qtr.), \$7,060,000.

(c) Size of firms—not available.

## DEPARTMENT OF AGRICULTURE RESPONSE

## PREPARED STATEMENT AND SUMMARY

Since the U.S. Department of Agriculture's procurement is highly decentralized, we must maximize outreach efforts to locate minority and female contractors capable of supplying the goods and services we buy. Much of our success has been attributed to actions taken by our own agency personnel. They have located and placed minority firms on appropriate bidder's lists and directed others to the SBA for 8(a) consideration. Assistance to minority contractors appears to stress initiatives to assist urban firms. More emphasis should be given to assisting firms in areas other than the metropolis. We would recommend that the following actions be considered to improve assistance to minority and female contractors:

Amend the Federal Procurement Regulations to permit Federal agencies to engage in minority business set-asides.

Encourage the development of minority and female contractors in those procurement areas where there is a deficiency of qualified contractors competing for contracts.

Actions to lessen the problems 8(a) firms encounter obtaining bonding would be a major benefit to those contractors seeking construction contracts.

Since the procurement regulations require maintenance of minority contractor source lists, initiation of a report to a central clearinghouse and subsequent publication would assist procurement officials to increase minority participation.

We appreciate the opportunity to participate in this conference and to be able to express our views.

## RESPONSE TO CONFERENCE QUESTIONS

(1) We compile data concerning all contracts awarded to minorities with a further breakdown of contracts in the construction and consultant areas as well as 8(a) contracts. We submit this data to OMBE on MBE Form 91 in response to FPR 1-1.1302 and Executive Order 11625. All data are available to the public.

(2) Since the Department has over 200 procurement offices with no automated data collection system, the data collected would have a low reliability factor of approximately 4.

(3) Yes, for the most part.

(4) This data could be developed within a 30 day period at an estimated cost of \$3,000.

(5) The term "socially and economically disadvantaged" has not been adequately defined to our satisfaction by the SBA. The minority business clauses required by the FPRs do not include women as a class.

(6) Contractors are already overburdened with reports required by Government regulations. In some cases, contractors do not comply because there are no compliance procedures to check on them. Contractor's reports would be unreliable and costly.

(7) The Department awards very few contracts resulting in subcontracts and those that are awarded are of small dollar amounts. We follow the policies established in the FPRs concerning reports required by prime contractors.

(8) The SBA has responsibility for the 8(a) program and other than the policies established in the FPRs, we do not set standards for control of this program. We would recommend adoption of criteria which would standardize eligibility for entry into the program.

(9) We have separated projects out of a major procurement so that minority firms could qualify to do the work. Our agencies submit proposed projects for the fiscal year to the Regional Offices of the SBA for 8(a) consideration. We have experienced inaction on the part of SBA in fulfilling our requirements. In the Western Region, millions of dollars in requirements have been offered with no resultant 8(a) contracts. Overall, 8(a) contracts have not been processed as timely as competitive contracts. We have experienced no problems coordinating with the Office of Business Development of the SBA.

(10) A major conflict exists concerning nonperformance and default procedures under the 8(a) program. In a case now pending before the Agriculture Board of Contract Appeals, an 8(a) subcontractor defaulted and was released by the prime contractor, SBA. The Department of Agriculture asked the Comptroller General (GAO) if reprourement costs could be waived. The Comptroller General in

Decision B-185427 dated April 2, 1976, advised waiver was not appropriate and that USDA should proceed with a final decision of the contracting officer. The decision was made assessing reprocurement costs against SBA. SBA appealed to the Agriculture Board and asked GAO to reconsider. USDA moved for summary judgment on the basis SBA had admitted the contract and breach. The Board denied the motion and called for briefs on the Board's jurisdiction. The Board questioned: Who is the true contractor; should the Attorney General resolve disputes between agencies; how could a judgment be enforced; what would be SBA's appeal rights? The Department of Agriculture believes allowing SBA to unilaterally dissolve contracts makes such agreements illusory.

(11) We have submitted a nation-wide listing of all proposed construction projects to Minority Contractors Assistance Project (MCAP) for assistance in locating and developing contractors. MCAP is an OMBE funded organization based in Washington, D.C. A change in the Small Business Act allowing agencies to contract directly with the 8(a) firms would greatly decrease the time spent in awarding a requirement. The SBA would retain responsibility for certifying firms eligible for the program.

(12) Bonding is required by regulation on construction contracts and is not internally generated.

(13) The following figures represent data for Fiscal Year 1976:

(a) We are unable to give a breakdown in this area. Data could be obtained by contacting each of our procurement offices.

(b) Contracts totaling \$10,253,000 were awarded to minority and female contractors. We are unable to report separate data on female contractors because it is not collected.

(c) Of the total dollars awarded, \$352,726,000, small business concerns received \$240,724,000 or 68 percent.

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## GENERAL SERVICES ADMINISTRATION RESPONSE

### PREPARED STATEMENT

I am Fred Bunke, Assistant Commissioner for Procurement at the General Services Administration's Federal Supply Service. It is my pleasure to appear before this conference on "Measuring Progress in Female and Minority Federal Contracting" on behalf of Mr. Jay Solomon, Administrator of General Services.

The General Services Administration supports Government efforts to assist female and minority Federal contracting. GSA's principal role in the minority enterprise program, as is the case with other Federal procuring agencies, is to lend support through special Federal contracting opportunities. Although there is no formally established female entrepreneur program, GSA has participated in a number of conferences and workshops, for women in business. For example, GSA has actively sought to involve female-owned businesses in our procurement activities. On October 6, 1975, GSA was the first agency to conduct a procurement seminar for females. This was done as part of the observance of International Women's Year. The Agency also participated in the White House "Women in Business Conference" held on March 3, 1976. In addition, GSA participated in a Department of Labor procurement conference in Washington, D.C., on September 20-21, 1976. Outside of Washington, D.C., GSA has co-sponsored or participated in "women-in-business" conferences in Boston, New York, Chicago, Kansas City, Houston, Denver, and Los Angeles.

GSA does not currently capture data on contracts or subcontracts with female-owned firms. Consequently, the remainder of the statement addresses the conference questions only from the standpoint of minority firms. As far as considering women, as a class, among those likely to be "socially and economically disadvantaged" for the purposes of the Small Business Act of 1953, we do not presently classify women as so disadvantaged. The Office of Federal Procurement Policy would be the responsible office for making such a determination.

Currently, there is no Government-wide data base to reflect the total share of Federal contracting, including prime and subcontracting, that is being awarded to minority enterprise. However, the Office of Federal Procurement Policy (OFPP) is actively pursuing establishment of a Government-wide data base that would reflect statistics on contracting and subcontracting with minority firms. By noticed dated August 17, 1977, the Administrator of OFPP expanded

the scope of the potential data base to include consideration of maintaining Government-wide statistics on contracting with female-owned firms. GSA is participating on an interagency committee working on development of this data base.

On a civilian agency-wide basis, and pursuant to Federal Procurement Regulation 1-16.804, GSA collects data relative to the dollar volume of minority firm subcontracts from Government prime contractors. Collection of the data was initiated about two years ago, and is obtained from individual agency reports on Standard Form 37, "Report on Procurement by Civilian Agencies." The data is not yet reliable. The rating of our confidence in this data, on a scale of 1 to 10, would be 5. On September 12, 1977, GSA initiated a requirement that civilian agencies submit data regarding prime contract awards to minority firms. The data, which will be reported on SF37, will not be available until fiscal year 1978, and will not be very reliable until fiscal year 1979. All data on the SF37 is expressed of the total dollar value of awards in each category, by agency.

In addition, GSA maintains other data internally. In accordance with Executive Order 11625, GSA prepares a monthly report which portrays its efforts relative to the Small Business Administration's Section 8(a) program. The report is submitted to the White House and Office of Minority Business Enterprise, Department of Commerce. The data, which has a confidence rating of 10, includes contractor name and location, ethnic type, commodity or service procured, dollar amount of award, etc.

In the supplies and services area, we have completed data on GSA's share of prime contract awards to minority firms. The data, with a confidence level of 9, would include contractor name and location, commodity or service procured, dollar amount of award, etc. Although the data is readily available for our service contracts, a special computer run, at the cost of \$300, is required to obtain the data on our supply contracts.

In accordance with Federal Procurement Regulations, statistics, with a confidence level of 7, are maintained on the total dollar value of prime contractor subcontract awards to minority firms. However, this data is limited to prime contracts in excess of \$500,000, and is primarily in the construction contracting area. Contracts for commercial supply items are presently excluded from this reporting requirement. There has been no formal synthesizing of minority shares of subcontract dollars. Additionally, we have no way of measuring the accuracy of pro rata applications of corporation subcontracting ratios. Finally, GSA is able to break down the dollar volume of contracts awarded by: competitive and noncompetitive awarding; minority contractors; and, size of firm.

With respect to Section 8(a) awards, we accept SBA's written certification that individual 8(a) contractors are eligible under the SBA established criteria for participation in this program. We do not investigate ownership. No SBA 8(a) contractor receiving awards from GSA have been implicated in any abuse of this program to date. All GSA contractors, including SBA 8(a) contractors, must be determined responsible, and, when appropriate, potential contractors are investigated to determine production capacity and adequacy of sources of supplies and finances. Performance and payment bonds required by the Miller Act in connection with construction contracts over \$2,000 are mandatory.

Where practical to do so, specifications are broken-out to maximize the prospect of minority firms qualifying. This is typically accomplished in our construction requirements. For commercial supply items, we are unable to split our volume among competitive firms and minority firms to enhance minority firm participation under the 8(a) program. Current guidelines permit us to set-aside up to 40% of the annual usage of such an item. Additionally, we utilize a geographical zoning procedure in appropriate cases, whereby the overall requirement is split into zones. Awards are made by zone, rather than in the total, and this practice serves to reduce the quantity to one which is within the capability of a competitive, minority firm.

It is the stated policy of GSA to make all of its construction, supplies and services eligible for award to minority firms under the 8(a) program. SBA is aware of this policy and attempts to identify available contracting opportunities and match them with eligible 8(a) firms. Participation has been limited only by difficulties encountered by SBA in finding 8(a) firms capable of performing the contracts, which result in millions of dollars of contracting opportunities being returned after commitment has been made to SBA.

Relative to the processing time for 8(a) cases, we find, with the possible exception of building services contracts, there is an inordinate amount of time required

from SBA's receipt of the 8(a) proposal to the subsequent award of contract. Competitive bidding requires a stated time for submission of bids; if late, the bid is not considered for award. Under the 8(a) program, after the item has been identified by the procuring agency and SBA, SBA must then insure that necessary financing, manufacturing and management expertise is available before recommending that the procuring agency make the award. However, after contract award, we find that in a number of instances the 8(a) firms fail because of an apparent lack of financing or management expertise. Both of these deficiencies adversely impact our supply and construction programs. Additionally, our contract administration is more intense than under other contracts because of the three-party relationship of the contractor, SBA, and GSA. Minority contractors normally require delivery or performance extensions in excess of the original terms and conditions, caused at times by lack of capital or equipment to continue with production, and more frequently by lack of expertise and management.

GSA has used innovative approaches to expand participation by minority firms. Laws, regulations and judicial decisions have not impeded implementation of any of our ideas. For example, the Federal Supply Service, of GSA, and the SBA have entered into an interagency agreement that considerably shortens the timeframe involved in establishing the contract price to be paid to the 8(a) contractor. A "fast-pay" procedure has been introduced to insure that minority firms receive payment within 10 days after receipt of invoice. Additionally, GSA's Business Service Centers, located in various cities nationwide, provide daily counseling to minority entrepreneurs seeking contracting opportunities with GSA and the Federal establishment. In FY 1976, Business Service Centers participated in 126 minority trade fairs, procurement conference and seminars. In the construction area, one GSA Region has implemented a technology assistance program in blueprint reading, estimating and graphics for minority firms. The instruction is provided at no cost to the firms by GSA engineers and architects, and private industry contractors. Since inception of the program in 1971, 55 persons have successfully completed the courses. In another region, GSA furnishes advance copies of specifications and job plans of certain prime construction contracts to apprise minority firms of subcontracting opportunities.

We believe our current program is conceptually sound and provides ample opportunity for socially and economically disadvantaged firms to take advantage of GSA contracting opportunities.

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## CONTRACT COMPLIANCE DIVISION, GENERAL SERVICES ADMINISTRATION, RESPONSE

### PROBLEM

To make it possible for disadvantaged, small business entrepreneurs (minority and female) to participate equitably in: (a) The great American private enterprise system; (b) Government programs as contractors and subcontractors; and (c) their own economic development.

### FACTS BEARING ON THE PROBLEM

Historically, minority and female business persons have not been provided a fair and just opportunity to participate fully in either America's private enterprise system, or the Federal, State or local procurement process.

In spite of commendable efforts by the Small Business Administration (SBA), the Office of Minority Business Enterprise (OMBE) and selected departments and agencies of the Federal Government, the results obtained have been minimal.

Most small businesses, particularly those headed by minorities and women, are extremely vulnerable during business downturns or recessions. The current continuing difficult economic period has wreaked havoc on the disadvantaged entrepreneurs' efforts to become viable, tax-paying citizens as a result of receiving so much less than a fair share of this country's affluence.

All firms holding Federal Government contracts exceeding \$5,000 in value are presently required to use their best efforts to ensure that "minority business enterprises have the maximum practicable opportunity to participate in the performance of Government contracts." (Chapter 1, Federal Procurement Regulations, (FPR) 1-1.13.)

All contractors which are subject to Executive Order (EO) 11246 are also subject to this requirement (EO 11625 and the FPR). Routine compliance reviews, conducted pursuant to the EO 11246, cover a broad cross-section of the more significant firms which are subject to EO 11625 and the FPR. Clearly, the inclusion in these reviews of basic questions relating to the organization and results of contractors' minority business utilization efforts would increase awareness of, and compliance with, these requirements throughout American industry.

On April 25, 1975, a formal recommendation was made to the Director, Office of Federal Contract Compliance Programs (OFCCP) that immediate action be taken to ensure that future compliance reviews include consideration of contractors' efforts to afford full opportunities to minority entrepreneurs. In a response dated May 22, 1975, the Director stated, "I have taken a preliminary look at your proposal recently submitted concerning minority entrepreneurs. It clearly warrants our consideration and I appreciate the initiative exercised by GSA, I have asked my policy staff to review your proposal in depth. I will advise you of what conclusions we reach and actions we propose."

The President could, without legislative action, by revising EO 11625 and issuing instructions to the Secretary of Labor, cause all the Federal Governments' Contract Compliance Agencies to emphasize the equitable involvement of minority and female owned firms in the procurement processes of the Federal Government as well as the private sector.

#### CONCLUSION

Clearly, the inclusion in reviews conducted by contract compliance organizations of the federal, state and local governments of basic questions relating to the organization and results of contractors minority and female business utilization efforts would increase awareness of, and compliance with, this requirement throughout American industry. This action could be rapidly accomplished, resulting in swift increases in the revenues of minority and female owned businesses and the deposits in minority and female owned banks—increments which, given the present economic situation, could be crucial in many instances. Moreover, such action would avoid the substantial costs involved in establishing a program which would be solely devoted to securing compliance with this requirement, as well as the even greater social costs which will be incurred if the requirement continues to be unenforced.

Programs designed to ensure that minority and female owned businesses are afforded an equal opportunity to act as suppliers of goods and services to governmental contractors are among those programs which have a high potential for increasing the employment opportunities of minorities and women.

In spite of limited job opportunities and a generally lower level of income, the consumer market capability of minorities has been estimated to exceed \$100 billions and obviously that of women, the majority group in America is much, much higher therefore the public relations aspect of the actions considered herein is definitely favorable to the private sector businesses participating aggressively in same.

#### RECOMMENDATIONS

1. Revise Executive Order 11625 to require all appropriate Federal Government organizations, in addition to contracting officers, to take every means at their disposal to assist disadvantaged minority and female entrepreneurs in the economic benefits of the Nation's private enterprise system.

2. Direct that Federal Government organizations, particularly the Office of Federal Contract Compliance Programs, take immediate action to ensure that all future compliance reviews include consideration of contractors' efforts to afford opportunities to minority and female entrepreneurs, including:

A. Examination of the results of contractors' efforts, measured against contractors' total expenditures for goods and services.

B. Review of contractors' minority and female business utilization programs to ensure that they contain at least the following minimal elements:

(1) Establishment of meaningful objectives for:

(a) Purchase of goods and services from minority and female entrepreneurs.

(b) Deposits in minority and female owned banks.

(c) Participation of minority and female owned insurance firms in company and employee coverage.

(d) Advertising in minority and female owned publications.

(2) Specific assignments of responsibility.

(3) Development of a staffing system to ensure that objectives established are met or exceeded. Such a staff would be responsible for developing policy and monitoring progress under the program.

(4) Development of an ongoing program to identify minority and female supply and service contractors, insurance companies, financial institutions, and media. Attention would also be given to the identification of small minority and female firms which would be utilized in the repair of company vehicles and equipment, and of minority and female owned retail establishments which might be utilized.

(5) Development of a reporting system which would ensure that the staff responsible for the program is aware of expenditures for goods and services, deposits, etc., before they are made in order to ensure proper monitoring and facilitate the identification of areas in which minority and female entrepreneurs may be utilized.

(6) Delegation of veto power over expenditures to the program's staff, in order that the provisions of the program may be enforced, where necessary.

(7) Development and use of strategies to assist small disadvantaged entrepreneurs in becoming capable of bidding on an equal basis for competitive contracts (e.g., breaking down contracts into units to facilitate use of smaller contractors).

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## DEPARTMENT OF COMMERCE RESPONSE

### PREPARED STATEMENT

The Department of Commerce is pleased to participate in this conference on "Measuring Progress in Female and Minority Federal Contracting", because it shares your concern with the flow of Federal procurement dollars to this area of our economy and advocates changed regulations, to require the collection of data as it relates to female owned businesses.

The Department formed a Minority Business Program Committee in April 1976, to coordinate program activities to ensure the continued development and growth of a unified and comprehensive minority business program within the Department. Some of the programs created by the Committee are:

Established procedures for Commerce's operating elements to utilize minority banks.

GSA/DOC prospective bidder contract program to involve more minority firms in selected GSA procurements.

Established a program to assist minority owned companies to become exporters.

Developed special economic study estimates and projections to assist in the administration of Minority Business Enterprise Programs.

Increased goals for minority procurement and grant programs.

The Department has initiated Affirmative Action steps, as a pilot project, in several of our CPA contracts where the prime Contractor must subcontract to minority owned firms. This process has been challenged and we have been sustained in our actions by the GAO.

We have been actively involved in the promotion of minority business and the SBA 8(a) subcontracting programs and we have a good record.

Records on women business owners are not maintained, however, Secretary Kreps has taken positive steps to initiate collection of this data through the Federal Procurement Data System.

An Interagency Task Force on women business owners, initiated by Secretary Kreps and established by the President, will conduct their first official meeting in mid-October. The Department of Commerce is the lead agency to enhance the Government's ability to assist women in business.

A cursory review of the Department's fiscal year 1976 contract files were found to contain the mandatory clause(s) relating to minority business subcontracting as required by the Federal Procurement Regulations.

The Maritime Administration, Ship Subsidy Construction Division, includes the subcontracting clauses in all subsidy construction contracts. In fiscal year 1976, \$10 million were awarded to minority subcontractors.

## RESPONSE TO CONFERENCE QUESTIONS

(1) The Department of Commerce compiles data on contracts and purchase orders awarded to minority firms through our own monthly Minority Business Procurement Report. Information on female owned firms is not obtained from any offeror, therefore, even a review of contract files will not reveal female ownership data.

Reports on the above data are submitted as follows:

The SF-37 is submitted to the General Services Administration as required by the Federal Procurement Regulations (subpart 1-16.8).

The Minority Business Enterprise Report is submitted to the Data Services Committee of the Interagency Council for Minority Business as prescribed in Executive Order 11625 dated October 13, 1971, Section 1(3).

All of the data collected is available to the public upon request.

(2) The assessment of the quality of various aggregate data the Department of Commerce maintains would be rated 9 on scale of 10 with regard to minority procurement. No information is available on procurement from female owned firms.

(3) The Department of Commerce data reported to other agencies are of consistent quality and sufficient uniformity to permit useful aggregation with other government-wide data.

(4) The Department of Commerce can develop statistics portraying the award actions issued to minority-owned firms. Statistics on female-owned firms are not being collected presently. Except for the Ship Subsidy Program of MARAD there is little opportunity for a meaningful minority subcontracting program, because there are few contracts over \$500,000. In fiscal year 1976, \$10 million were awarded under the Ship Subsidy Program to minority subcontractors. It would be very time consuming and expensive to require prime contractors to implement and report on a minority subcontracting program. Starting in fiscal year 1978 DOC will include the Minority Business Subcontracting Clause in all contracts over \$500,000.

(5) The Department of Commerce is not in a position to consider women as a class to be "socially and economically disadvantaged" for the purposes of the Small Business Act of 1953. However, individual women can apply for consideration as socially and economically disadvantaged persons.

(6) The establishment of a uniform government-wide contractor reporting system would be beneficial to the Department of Commerce. The Federal Data System is scheduled to be effective October 1, 1978. This system will capture the needed data. On June 21, 1977 the Secretary of Commerce initiated a request to the Administrator, Office of Federal Procurement Policy, OMB, to provide for the collection of information identifying contract awards made to businesses owned by women.

The Interagency Task Force on Women Business Owners, established by the President will conduct their first official meeting in mid-October 1977. The Task Force was established on Secretary Kreps' initiative and the Department of Commerce is the lead Agency to enhance the Government's ability to assist women in business.

The Task Force is specifically charged with:

Identifying and assessing the adequacy of existing data on women entrepreneurs, identifying needs for additional information, and proposing methods of collecting it.

Identifying the primary practices or conditions which discourage women from becoming entrepreneurs, which discriminate against them or place them at a competitive disadvantage.

Assessing current Federal programs and practices which discriminate or are designed to mitigate these conditions and practices, and proposing changes in Federal law, regulation and practice, including impact on the Federal budget.

Due to our limited experience in subcontracting, the Department would defer to agencies with greater experience in this area (i.e., DOD and NASA).

(7) The objective criteria used by the Department of Commerce to determine reports required of prime contractors regarding subcontracts is expressed in the Federal Procurement Regulations. We do not synthesize in any case, minority or female shares of subcontract dollar volume.

(8) DOC has an extensive audit program to minimize the opportunity for abuse in minority procurement. Every contract issued in connection with the OMBE Program is audited. The audit program is invaluable for detecting abuse. Other agencies could adopt similar measures.

(9) The Department of Commerce does make an effort to break-up contract specifications in ways likely to maximize the prospect of minority firms qualifying.

The selection of 8(a) firms to be offered subcontracts through the Small Business Administration is done by our Small Business Specialist who also performs the screening process for the small business programs. Some of the 8(a) firms are selected by track record, knowledge of firms and experience. SBA makes the final determination in awarding a contract to an 8(a) firm. The Department has encountered no difficulty in 8(a) contracts being processed in a timely manner. In some cases award is made in a much less time frame than competitively awarded contracts. The Department has had no major problems coordinating with the Office of Business Development.

(10) The Department of Commerce has encountered a few difficulties in the performance of minority contractors.

An interior decorating firm, minority female owned, received a \$30,000 contract and encountered a cost overrun of \$7,000. The overrun was not reimbursed by the Government.

There were two minority female advertising contracts in approximate amounts of \$70,000 and \$80,000. One had an overrun of \$30,000 and the other contractor abandoned the contract.

All three of the above contractors were lacking in management and financial capabilities. Accounting records could not support costs claimed under the contracts. One of the advertising contractors went out of business without completing the scope of work stipulated in the contracts due to lack of understanding and intent of the contract.

(11) The Department has attempted to use innovative approaches to expend participation by minority firms. The Department formed a Minority Business Program Committee in April 1976, to coordinate program activities to ensure the continued development and growth of a unified and comprehensive minority business program within the Department. Programs created by the committee are as follows:

Established procedures for all operating elements to utilize minority banks. The Department will deposit a minimum of \$20 million in minority banks this fiscal year.

The Department's Domestic and International Business Administration (DIBA), under a recent agreement with the General Services Administration (GSA) instituted a new DOC/GSA Prospective Bidder Contract Program to increase opportunities to bid on government contracts. Through this program DOC hopes to involve more minority firms in selected GSA procurements.

Currently exploring opportunities for Bureau of Economic Analysis to conduct special economic studies or prepare special economic estimates and projections to assist in the administration of the Office of Minority Business Enterprise Programs.

Established a program in the Bureau of Domestic and International Business Administration to assist minority owned companies to become exporters.

Increased goals over fiscal year 1976 for minority procurements and grant programs. Fiscal year 1977 minority procurement was increased by 26 percent; grants by 7 percent; ship construction subsidy subcontracting by 20 percent and 8(a) procurements by 20 percent.

We recommend that every acquisition over \$10K be advertised in the Commerce Business Daily by every government agency. The listing in the Commerce Business Daily should be done far enough in advance to permit all female, minority and small business firms to identify their capabilities to the procuring activity.

(12) In general, the Department does not impose bonding requirements on minority contractors other than that required by statute. In construction contracts, The Miller Act, requires bonding on all construction contracts of \$2,000 or more.

(13) The Department of Commerce can not at present break down the dollar volume of contracts awarded competitively and noncompetitively, to minority contractors and by the size of the firm. A reporting system to collect this information could be readily established. The Department does not keep records on female contractors.

## DEPARTMENT OF THE TREASURY RESPONSE

## RESPONSE TO CONFERENCE QUESTIONS

(1) With respect to collection of data on contract awards, Treasury reports to the Office of Minority Business Enterprise, semiannually, the number and amounts of minority contracting both under the Small Business Administration's 8(a) Program and direct awards to minority firms. This report is submitted at the request of the Commerce Department, has been assigned Interagency Reports Control Symbol 1561-DoC-SA and is in consonance with the Federal Procurement Regulations (FPR), Section 1-1.1302(a)(6). These reports are available to the public under the Freedom of Information Act and, we understand, the Government-wide consolidation is published by the Office of Minority Business Enterprise. To date, we have not been required by regulation to maintain data or ascertain ownership status of female-owned contractors.

(2) The quality of the aggregate data on minority contracting we believe is very reliable (value 9 on a scale of 1-10) with respect to 8(a) contracts, and perhaps a 7 with respect to direct minority contracts, yielding a straight average of 8. Direct minority contracts are identified as such by the representation requirement in the bid form (in accordance with FPR 1-1.1303); the representation is not always completed, and there is no review of its accuracy when completed—hence the lower assessment of data reliability.

(3) To the best of our knowledge, our minority contracting data reported is able to be aggregated with similar data submitted by other agencies.

(4) Statistics could be developed to portray the share of prime contracts issued to minority firms on the basis of data collected in the aforementioned OMBE report. Similar data is not collected for female-owned firms. Major contracts over \$500,000 contain a clause (FPR 1-1.1310-2) which requires prime contractors to promote minority subcontracting, maintain records on such subcontracting, and cooperate with any requests from the Government contracting officer in surveys pertaining to minority subcontracting. Similar procurement regulations do not exist with respect to female-owned subcontracting. The processing of such a report could be accomplished for minority contracts and subcontracts at an estimated cost of \$12,000 to the Department (one man-year) and an undetermined cost to prime contractors. As far as data for female-owned contractors and subcontractors, the basic data collection if performed retroactively would be extremely costly, perhaps as high as \$50,000 (estimated), not counting costs to prime contractors.

(5) With respect to the designation of women as a "socially and economically disadvantaged" group for the purposes of the Small Business Act of 1953, we would defer to the Small Business Administration's (SBA) interpretation of that statute. It is our understanding, however, that women or female-owned firms are not considered by the SBA as "socially and economically disadvantaged" for the purposes of the 8(a) Set Aside Program.

(6) We understand that the Office of Federal Procurement Policy is developing a Government-wide contracting data base system that, when implemented by Federal Executive agencies, will enable identification of various contract types and contractors. Such a system could be extended, if this has not already been planned, to incorporate data collection on minority contracting and any other areas for which data collection is required by regulation. As far as suggestions, we would only recommend that the Federal Procurement Regulations incorporate appropriate contractual provisions to assure that agencies can easily and economically ascertain contractor status. Also, we believe that it would appear to be extremely costly—and perhaps undesirable—to collect such data on purchase order awards (i.e., small purchase transactions under \$10,000 negotiated under 41 USC 252[e]) which are usually simplified, one-page contractual transactions.

(7) Treasury does not have its own policy with regard to requiring prime contractors to submit reports on any subcontractors.

(8) We have not had set-aside procurements restricted to female-owned or minority-owned contracts, except for the Small Business Administration's 8(a) Program for minority firms. SBA, we understand, has standards to identify suspected abuses of the 8(a) Program.

(9) Treasury encourages its bureaus to break-up contract specifications, where feasible, in order to allow minority firms to compete for our requirements. Contracts are selected for 8(a) awards on the basis of known availability of services and supplies from contractors certified by SBA. Our needs have been processed

in a timely manner, since the competitive procurement cycle is not required on an 8(a) contract. Our primary suggestion to improve coordination with the SBA is to have that agency provide us with current listings of 8(a) certified firms.

(10) We have not knowingly had any contracts with female-owned firms. As far as minority contractors, we believe that there have been no major problems. Any minor problems experienced are generally no different than experienced with non-minority firms.

(11) Our programs have been primarily geared to furthering minority participation in accordance with Executive Order 11625 and FPR 1-1.13. Our approaches are:

(a) Wide distribution of our pamphlet "Selling to the Department of the Treasury" to minority firms and organizations, as well as to Government agencies such as SBA and the Office of Minority Business Enterprise.

(b) Development of our handbook title "Minority Business Contracting Handbook" to be used in our Department's training classes for bureau procurement personnel.

(c) Staff assistance visits to our headquarters and field procurement offices in order to emphasize our minority programs to operating staffs.

(d) Participation in conferences and seminars sponsored by or for minority enterprise.

We will continue these approaches, increasing them as staffing permits. Additionally, we have in the past established Departmental goals for minority contracting and are continuing to do so. For the future, to more accurately portray the agencies respective amounts of contracting available to minority and other firms, we suggest that any statistical representation acknowledge that a major portion of our agencies commercial expenditures are directed to GSA mandatory sources and large computer or other systems, and are not "available" for minority contracting.

(12) We do not have a special bonding requirement for minority contractors.

(13) Although our existing reports do not break down our expenditures exactly as the questionnaire requires, the following data for fiscal year 1976 may be helpful:

(a) Formal advertising (all competitive) <sup>1</sup> .....	\$84, 512, 000
Negotiated (both competitive and noncompetitive).....	80, 721, 000
Mandatory sources (e.g., under GSA contracts).....	86, 116, 000
	<hr/>
Total procurement.....	251, 349, 000
	<hr/>
(b) Minority contracts: <sup>2</sup>	
Direct contracts (to the extent identifiable).....	445, 000
8(a) set-aside.....	223, 000
	<hr/>
Total minority contracts.....	668, 000
	<hr/>
(c) Small business contracts <sup>1</sup> .....	69, 633, 000
Large business contracts.....	181, 716, 000
	<hr/>
Total.....	251, 349, 000

<sup>1</sup> SF 37, Report on Procurement by Civilian Executive Agencies, fiscal year 1976.

<sup>2</sup> OMBE 91, Minority Business Report, fiscal year 1976.

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT RESPONSE

### RESPONSE TO CONFERENCE QUESTIONS

*Question 1.* Please specify the type and form of data your agency compiles and processes on contracts awarded to minority and female-owned firms. To whom do you report your findings and in response to what statutory or regulatory requirements? Which of your data are generally available to the public upon request, and which are not?

Answer. The Department of Housing and Urban Development compiles data on Contractors as to size of the business and whether or not the firm is minority-owned. To date the Department has not compiled data on female-owned organi-

zations. We prepare the Standard Form 37 required by Federal Procurement Regulation on a semi-annual basis to the General Services Administration as well as the MBE Form 91 to Department of Commerce's Office of Minority Business Enterprise on minority prime contract awards, which includes awards to small businesses. Any of these reports is available to the public upon request.

*Question 2.* What is your assessment of the quality of various aggregate data you regularly maintain? On a scale of 1 to 10, with 1 representing a total lack of confidence, rate the reliability, in your judgment, of the various data you process on minority and female shares of contracting and subcontracting originating with your agency.

Answer. The data we possess is of generally good quality, since all procurement actions are maintained on a computer-based Management Information System. The confidence level on reliability is rated at 7.5, since it is conceivable that because our Certification for Minority Business is requested of Contractors on a voluntary basis, some might elect not to indicate their minority status. Allowing for this, and for human error, explains the confidence level we have indicated. We do not code nor collect data on female-owned Contractors, so this is not retrievable from our system.

*Question 3.* To the best of your knowledge, are data you report to other agencies of consistent quality and sufficient uniformity of definitions to permit useful aggregation with other such government-wide data? Please identify where incongruencies exist.

Answer. Yes, our definitions are believed to be consistent with those promulgated to all Government agencies. The Department has implemented no additional or differing requirements.

*Question 4.* If asked, could you develop statistics portraying the shares of contracts issued to minority and female-owned firms and the shares of subcontracts issued by your prime contractors to such firms? If so, how costly and time-consuming would the data processing for such an exercise be (estimate)?

Answer. We are able to retrieve information at any time on Minority Contracts. As indicated above, we are unable to retrieve on a retrospective basis, the information on female-owned firms. However we could obtain this in the future as part of the solicitation process, and enter it into the data bank as a routine matter. To do so with the existing inventory of contracts would require a manual search effort.

Limited data is available on subcontracts with respect to minority or female-owned. This effort would require a manual search and/or survey as well.

*Question 5.* Does your agency consider women, as a class, among those likely to be "socially and economically disadvantaged" for the purposes of the Small Business Act of 1953?

Answer. HUD has not promulgated any procurement policy as yet which considers this issue. We have taken our lead from the SBA that if this can be shown for the purpose of 8(a) certification, we honor that eligibility.

*Question 6.* What suggestions do you have regarding establishment of uniform government-wide contractor reporting, recordkeeping, and retrieval standards to facilitate availability of trend data on minority and female contracting?

Answer. A requirement to collect these data would have to be promulgated by the OFPP or the GSA as a new procurement regulation. Until such time as these data elements are universally defined, trends will not be able to be recognized.

Of possible consideration is a "Representations and Certifications" requirement on female-owned firms; and a compulsory certification as to minority status.

*Question 7.* What is your policy, and what objective criteria do you use, to determine what reports you require of which prime contractors regarding subcontracts they enter in fulfillment of their contracts? Do you synthesize, in any cases, minority or female shares of subcontract dollar volume? Are such procedures, such as pro rata application of corporation subcontracting ratios, reasonably accurate methodologically?

Answer. Reports on subcontracts per se are not required. The Department collects limited data on the identity of subcontractors with respect to minority or female-owned.

*Question 8.* What objective standards do you apply to identify suspected abuse of noncompetitively awarded minority or female set-asides? Are some such standards unique to your agency? Can you suggest others which could be adopted in management control of such contract awards throughout the government?

Answer. The only program which HUD uses to accomplish minority set-asides is the Section 8(a) program. It has not been our experience to suspect any incidents of abuse in the selection process. As a result, no unique standards have been established.

*Question 9.* Does your agency make an effort to break-up contract specifications in ways likely to maximize the prospect of minority firms' qualifying? How do you select contracts to be offered through Section 8(a) subcontracts of the Small Business Administration (SBA)? In your experience, have procurement needs filled through 8(a) subcontracts been processed in as timely a manner as competitively offered contracts? What other problems, if any, have you had coordinating with the Office of Business Development of the SBA?

Answer. HUD has issued a regulation (41 CFR 24-1.709-50) which states that construction, repair and reconditioning work, from \$2,000 to \$1,000,000, is set-aside for Small Business. Other Departmental requirements on the average result in contracts in the \$100,000 range. Each proposed Work Scope is reviewed for Small Business set-aside. The process is time-consuming, since it requires the involvement of too many actors in our judgment.

The coordinating function of SBA is one which is seen as problematic. We recommend that authority be given directly to the agencies to contract with 8(a) contractors. Frequently the placement process experiences undue delays which we feel could be avoided if a more direct interactive process with the subcontractor were permitted. The role of SBA should be solely one of certification, business monitoring and eventual "graduation" of client firms, but not to be involved with the placement of the contracts.

*Question 10.* What difficulties, if any, has your agency encountered in the performance of minority or female contractors? Please cite examples without implicating particular companies or individuals.

Answer. As a category of Contractors, there is no greater or lesser amount of difficulty in dealing with minority or female-owned contractors in fulfilling the terms of the contract. As to the quality of technical performance, there has been an understandable variance in the quality of the product, usually depending on the nature of the work.

The 8(a) program is designed such that certain of the Government's administrative remedies are lost. This is further compounded by the dual-agency "team" which represents "the Government". Clarification of this cumbersome relationship would permit better contract compliance and monitoring.

*Question 11.* Has your agency attempted to use innovative approaches to expand participation by minority or female firms? Do you have ideas you could implement if not impeded by certain laws, regulations, or judicial decisions? Do you plan to utilize new approaches in the near future? What ideas might be of general benefit to your colleagues in their efforts? Please be specific.

Answer. Efforts to expand participation by minority businesses include (1) an advance notice of procurement opportunities is sent to the minority firms on our computerized bidders list. In this way, minority firms are alerted to solicitations available in their expressed areas of expertise.

(2) The Office of Procurement and Contracts and the Office of General Counsel worked together to use 8(a) firms in the Architect/Engineer selection process where the Brooks Act is applicable. In one series of flood study contracts for the flood Insurance Administration, a pool of six minority firms were solicited, resulting in awards to four of them for the study efforts.

(3) One large program office under the Assistant Secretary for Housing has established a specific minority goals program for placement of repair and reconditioning requirements.

*Question 12.* If you require bonding of firms awarded noncompetitive minority contracts, is the requirement internally generated, or a product of statute or regulation?

Answer. The Miller Act is statutory; there is no discretion in its applicability to the construction, repair and reconditioning areas. It is suggested that consideration be given to permit some discretion in the bonding requirements for Minority and Small Businesses. Presently, the Miller Act bonding requirements apply at \$2,000 and above. It is believed it would enhance the participation of Minority Contractors if this threshold were amended to be consistent with the Small Purchase threshold of \$10,000.00.

*Question 13.* If you know, could you breakdown the dollar volume of contracts awarded by:

- (a) Competitive and noncompetitive awarding;
- (b) Minority and female contractors; and
- (c) Size of firm.

Answer. Figures are based on fiscal year 1976:

Total volume.....	\$257, 103, 000
(a) Competitive.....	163, 227, 860
Noncompetitive.....	35, 740, 921
(b) Minorities.....	19, 300, 000
(c) Small business.....	142, 260, 000
Other than small business.....	114, 843, 000

## ENVIRONMENTAL PROTECTION AGENCY RESPONSE

### RESPONSE TO CONFERENCE QUESTIONS

Federal Agencies/departments are required by Executive Order 11625 to implement programs directed to the assurance that minority-owned and operated business enterprises are awarded a reasonable share of Government contracts. In light of this, the Environmental Protection Agency (EPA) has developed an aggressive program to implement both the spirit and intent of the Executive Order. A major segment of our program entails the setting of goals as to the dollar amounts of procurement to be awarded to these firms.

During the past four fiscal years, EPA has established dollar goals for its Minority Business Enterprise Program. For fiscal year 1977, EPA established a goal of \$15 million in procurement of both goods and services from minority businesses. The Agency mid-year report showed that \$9 million in minority business (direct and indirect contract awards) had been accomplished during the first half of fiscal year 1977. It is anticipated that the Agency's fiscal year 1977 goal of \$15 million will be met.

The EPA's Contracts Management Division has been delegated the responsibility for further implementing the Agency's overall Minority Business Enterprise Program effort.

The Automated Data System which EPA uses provides total actions and dollar value of awards under section 8(a) of the Small Business Act and minority firms other than 8(a). A summary of this information is transmitted quarterly to the Department of Commerce and the Small Business Administration (SBA) in addition to other appropriate EPA personnel. The summary information is transmitted to the Department of Commerce in accordance with the guidelines established by the Secretary of Commerce in conformance with the execution of Executive Order 11625. The Agency does distribute a publication of relevant data and levels of program activities of its Minority Business Enterprise Program efforts.

Based on the Agency's past and present experience it would rate the quality and reliability of its data as 9 on the scale of one to ten. With regard to subcontracting, the Agency's contracting officer obtained the information from Optional Form 61 submitted by prospective contractors. The information is consolidated by each major procuring activity and submitted to the Agency's Small Business Advisor and Minority Enterprise Program Officer for review and evaluation.

The subcontracting data and other data that is referenced above is also reported to the Department of Commerce and SBA. The quality is consistent and no problems exist with uniformity of definition which would negate the aggregation of this information with other agencies.

To date EPA does not have an information system which provides for tracking the number of contracts and dollars awarded to businesses according to sex. In order to obtain such information it would involve canvassing each major procuring activity and require them to review all active contracts in addition to contacting major prime contractors to provide subcontracting information. This would be extremely costly and time consuming. The EPA has obtained information from SBA relating to prime contracts awarded to minority female-owned firms under the Section 8(a) Business Development Program.

With respect to the subject of women as a class, this Agency has not established a definitive policy as of this writing.

The EPA has no suggestions regarding the establishment of an uniform Government-wide contractor reporting, record keeping, and retrieval standard to facilitate availability of trend data on minority and female contracting. It is the view of EPA that the current Department of Commerce's Form (MBE 91) and recent GSA revised SF 147 satisfactorily fulfills this reporting requirement insofar as minority, but not for female contracting. It would be easy to revise these forms to include female contract awards.

The EPA criteria for determining reporting requirements with respect to a prime contractor's subcontract activity is based on subcontracting opportunities that the prime contract may offer. If there are no substantial opportunities, we do not include the subcontracting clause in the contract, that among other requirements, requires reporting of subcontracts.

The EPA relies primarily upon SBA's approval process in conformance with SBA's Rules and Regulations Part 129 of Chapter 1, Title 13 of the Code of Federal Regulations and SBA's Standard Operating Procedure 60-61-2 to identify suspected abuse of noncompetitively awarded minority or female set-asides under the 8(a) business development program.

In general, this Agency does not have the types of procurements that lend themselves to breakup contract specifications in ways likely to maximize the prospects of minority firms qualifying. We do, however, have procurement such as ADP in which we have identified multiple tasks. This is also true of several of the Agency's auditing requirements. In each case, EPA has awarded 8(a) contracts to those firms certified by SBA to provide such services. Final selection of contract award is based primarily on a submission of a technical proposal. In the instances just cited and other procurement the experience to date on processing by SBA has been generally satisfactory. The EPA has experienced a good working relationship with SBA.

The EPA has encountered minimal difficulties on the performance of minority and/or female-owned and operated enterprises. This includes 8(a) and non 8(a) minority owned and female firms.

In the furtherance of the MBEP, EPA has entered into an inter-agency agreement with the Department to provide funds of \$50,000 for partial support for the Technology Utilization Program (TUP). One purpose of the program is to identify EPA research developed products which can be legally transferred to the TUP, to give minority manufacturers an opportunity to capitalize on early entry into new developing markets.

The EPA has recently implemented an innovative approach to MBE development. The Agency recently held a Minority Business Procurement Exposition at its Cincinnati, Ohio Laboratory. The attendees received the opportunity to present their capabilities and experiences to program personnel having responsibility for developing requirements within their area of operation. Plans are underway to hold similar expositions in EPA's headquarters and other research and development laboratories. We do not have any pending projects relating to MBE which would be impeded by existing laws, regulations or judicial decisions. EPA is constantly seeking new techniques, approaches and methodologies to expand and enhance minority participation in all aspects of the Agency's programs. EPA is very much aware of the significance of maintaining a viable-active MBE program.

Concerning ideas which may be beneficial to other agencies in their (MBE) efforts, EPA has instituted a formal procurement planning program whereby the Agency's project officers are required to submit their anticipated plan of contract commitments to the Director, Contracts Management Division, at the beginning of the current fiscal year. Such a procedure has enabled the Agency's MBEP officer to identify an increased number of requirements and/or business opportunities to be directed to these enterprises.

The only requirements that EPA has for bonding are imposed by the Miller Act (40 U.S.C. 2702-2706) with respect to construction contracts.

The EPA does have the information available to breakdown the dollar volume of contract awarded by:

- (a) Competitive and non-competitive awarding;
- (b) Minority (with the exceptions of female contractors);
- (c) Size; and
- (d) Competitive and non-competitive awarding.

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION RESPONSE

### PREPARED STATEMENT

NASA has a comprehensive procurement information system which provides accurate specific information on its procurement activities, including prime and subcontract awards to small business and minority business enterprise. Lacking a clear definition of "female-owned firms", and thusly without a related certification requirement, NASA is unable to collect and report on such firms. NASA is

also precluded by law from providing specific subcontracting information which identifies individual subcontractors and the value of such awards under individual prime contracts. With these exceptions, NASA procurement information is available on request and is regularly included in NASA's *Annual Procurement Report*.

NASA's procurement information system and resulting data is readily compatible with other Federal Agencies, particularly that of the Department of Defense. It will also be of interest to the Conference, that the Office of Federal Procurement Policy (OFPP) is directing an interagency effort to establish a common and inclusive procurement data base for the Government. The system is expected to be operational by October 1, 1978.

With respect to subcontract information, NASA receives aggregate data including small business and minority business from its prime contractors. A recent revision to its reporting system is expected to provide higher quality data through the second tier of subcontracting.

In its continuing effort to enhance small business and minority business procurement opportunities, NASA places emphasis on the planning process and the setting of procurement goals. In addition, prospective NASA contractors are similarly required to include their subcontracting plans for source evaluation and selection considerations. In construction contracts, a 20% goal for subcontracting with minority firms has been established. Though bonding has been an issue, we believe that it is an important and accepted element in the construction business to protect suppliers, workers and subcontractors alike.

In summary, we believe that NASA has an efficient highly accurate procurement management information system, which we believe is providing more than adequate measure of our small business and minority business efforts.

#### RESPONSE TO CONFERENCE QUESTIONS

*Question 1.* Please specify the type and form of data your agency compiles and processes on contracts awarded to minority and female owned firms. To whom do you report your findings and in response to what statutory or regulatory requirements? Which of your data are generally available to the public upon request, and which are not?

Answer. NASA does not develop or report information on female owned firms. The Regulations of the Small Business Administration, as published in Title 13 of the Code of Federal Regulations, sets forth criteria for defining small business and minority business, but does not provide similar criteria for defining female owned business entities. Therefore, the current NASA Procurement Regulation does not require company certification of a female owned and controlled business, as is required in the case of both small business and minority firms. Accordingly, NASA's procurement information system does not record data on female owned firms. With that exception, NASA's procurement information system is able to provide extensive statistical data on small and minority firms, and others, such as contractor's name, type of contract, place of performance, contract value, work description, size and type of firm, and the like. In all, some 37 data fields are provided on all procurements that are individually reportable (NASA Form 507). Other procurement data is presented in aggregate form.

NASA reports semiannual data on minority contract awards to the Office of Minority Business Enterprise on MBE Form 91 in accordance with Executive Order 11625. NASA also reports prime contract and small business and minority business subcontracting information to the General Services Administration semiannually on Standard Form 37 in accordance with Federal Procurement Regulation 1-16.804. With the exception of specific subcontracting information identifying individual subcontractors and the value of such awards under individual prime contracts, as restricted from disclosure by law (18 USC 1905), NASA procurement information is generally available to the public on request.

*Question 2.* What is your assessment of the quality of various aggregate data you regularly maintain? On a scale of 1 to 10, with 1 representing a total lack of confidence, rate the reliability, in your judgment, of the various data you process on minority and female shares of contracting and subcontracting originating with your agency.

Answer. NASA rates the overall quality of the procurement data it regularly maintains as a 9. Minority prime contract information is rated as 8, with the exception of Section 8(a) reporting which is evaluated as 9. Subcontracting information on minority business is rated as 7. NASA has recently revised its subcontract reporting system to improve the quality of its minority subcontract data to be effective on October 1, 1977.

**Question 3.** To the best of your knowledge, are data you report to other agencies of consistent quality and sufficient uniformity of definitions to permit useful aggregation with other such government-wide data? Please identify where incongruencies exist.

Answer. Data reported on prime contract awards are of sufficient consistency and quality to permit aggregation with other government-wide data.

**Question 4.** If asked, could you develop statistics portraying the shares of contracts issued to minority and female-owned firms and the shares of subcontracts issued by your prime contractors to such firms? If so, how costly and time-consuming would the data processing for such an exercise be (estimate)?

Answer. With the exceptions concerning female owned firms and the legal restrictions on specific subcontracting information, as discussed in 1 above, NASA can and will make available comprehensive prime and subcontract statistical information on small and minority firms. This information is routinely developed and could be made available at minimal cost, in summary form. This information is regularly included in NASA's *Annual Procurement Report*, which is widely distributed and also available on request.

**Question 5.** Does your agency consider women, as a class, among those likely to be "socially and economically disadvantaged" for the purposes of the Small Business Act of 1953?

Answer. NASA has formed no opinion or policy on whether women, *as a class*, would qualify "as socially and economically disadvantaged for the purposes of Section 8(a) of the Small Business Act." Since the responsibility for the establishment and implementation of eligibility criteria for the Section 8(a) program resides with the Small Business Administration, we look to that Agency for such policy formulation and guidance.

**Question 6.** What suggestions do you have regarding establishment of uniform government-wide contractor reporting, recordkeeping, and retrieval standards to facilitate availability of trend data on minority and female contracting?

Answer. The Office of Federal Procurement Policy (OFPP) has the responsibility for establishing a system for collecting, developing, and disseminating procurement data which takes into account the needs of Congress, the executive branch, and the private sector. To implement this responsibility, OFPP is developing the design of a Federal Procurement Data System (FPDS) which is expected to become operational October 1, 1978. Under this new government-wide procurement data system all executive branch departments and agencies will report uniform procurement data elements to a central data center, on a quarterly basis. NASA is participating in a working group with the OFPP, and other procurement agencies, in the development of this system. A proposal for the inclusion of information on female-owned companies in the system is presently before the committee. On August 23, 1977 a notice for comment to this effect was published in the Federal Register. Data elements on minority contracting have been incorporated in the developing system.

**Question 7.** What is your policy, and what objective criteria do you use, to determine what reports you require of which prime contractors regarding subcontracts they enter in fulfillment of their contracts? Do you synthesize, in any cases, minority or female shares of subcontract dollar volume? Are such procedures, such as pro rata application of corporation subcontracting ratios, reasonably accurate methodologically?

Answer. NASA's prime contractors are contractually required to report first-tier subcontracts in excess of \$10,000 on each of their prime contracts in excess of \$500,000. Each of the first-tier subcontractors awarded a NASA subcontract in excess of \$50,000 is required to report second-tier subcontracts in excess of \$10,000.

Data on small business and minority firms are reported by NASA contractors in summary form on NASA Form 524. This summary data does include pro rata sharing of overhead procurements among the various Government agency customers involved. NASA has no means of evaluating the accuracy of these procedures.

**Question 8.** What objective standards do you apply to identify suspected abuse of non-competitively awarded minority or female set asides? Are some such standards unique to your agency? Can you suggest others which could be adopted in management control of such contract awards throughout the government?

Answer. Though I do not fully understand the question, I wish to state that NASA as an Agency applies the highest moral and ethical standards for its contractors whether they are selected noncompetitively, as within the Section 8(a) program by the SBA, or through other competitive or noncompetitive procedures.

Such standards are not unique to NASA and are applicable to all Agencies of the Federal Government.

We have no specific recommendations to offer. Though we consider the Federal Procurement process to be relatively free of abuse, we recognize that occasionally such abuses do occur.

*Question 9.* Does your agency make an effort to break-up contract specifications in ways likely to maximize the prospect of minority firms' qualifying? How do you select contracts to be offered through Section 8(a) subcontracts of the Small Business Administration (SBA)? In your experience, have procurement needs filled through 8(a) subcontracts been processed in as timely a manner as competitively offered contracts? What other problems, if any, have you had coordinating with the Office of Business Development of the SBA?

Answer. Yes, as a regular function in the procurement planning process NASA does review its developing procurement requirements for breakout for Section 8(a) contracting and small business set-asides.

At each NASA installation a planning-advisory group, the Minority Business Enterprise Program Council, is responsible for the development of the activity's annual minority business program plan, including its Section 8(a) contracting plan. In addition, the installation's Small Business-Minority Business Specialist reviews each new procurement requirement, as it is initially identified, for Section 8(a) contracting potential.

Generally speaking, NASA has experienced no undue difficulty in the processing of Section 8(a) procurements. There have been, of course, some problem situations but for the most part the record has been satisfactory.

We have had no particular problems in coordinating our efforts with SBA's, Office of Business Development. Its incumbent Director and staff have been most cooperative and helpful to us. At this time we are working very closely with the SBA in a general review of the entire Section 8(a) program with the view of correcting basic deficiencies, and to revitalize its business development objectives.

*Question 10.* What difficulties, if any, has your agency encountered in the performance of minority or female contractors? Please cite examples without implying particular companies or individuals.

Answer. New minority Section 8(a) contractors, on occasion, have required and have been given various forms of technical and management assistance in the performance of their contracts. These include assistance in quality assurance planning, job estimating, on-site management and organization of work, and the like. Such NASA assistance is willingly provided, as a normal function of its involvement in the business development objectives of the Section 8(a) program.

*Question 11.* Has your agency attempted to use innovative approaches to expand participation by minority or female firms? Do you have ideas you could implement if not impeded by certain laws, regulations, or judicial decisions? Do you plan to utilize new approaches in the near future? What ideas might be of general benefit to your colleagues in their efforts? Please be specific.

Answer. NASA has implemented several innovative approaches to expand the participation of minority firms in its procurement opportunities. These include the use of planning-advisory groups, involving top management personnel in the planning, implementation and review of the minority business program activities at NASA field installations. These Minority Business Enterprise Program Councils, have proven to be an effective organizational device for achieving NASA's program objectives. In addition, NASA has established a requirement of its major contractors to submit their minority subcontracting plans in their proposals for use in the evaluation and selection process. Approved plans are negotiated into the resulting contract and may be included in the incentive fee structure, when appropriate. NASA has also established the contractual goal that at least 20 percent of its construction subcontracting be accomplished by minority firms.

We have no specific ideas that are impeded by law, regulation or judicial decisions to offer. However, we are continuing to seek out other means for enhancing minority participation in NASA's work.

We believe that the judicious application of the concept of mandatory small business and minority business subcontracting is worthy of general consideration. This envisions the development of realistic contractual goals for the particular contract work, in consonance with the specific capabilities of known small and minority firms.

*Question 12.* If you require bonding of firms awarded non-competitive minority contracts, is the requirement internally generated, or a product of statute or regulation?

Answer. Bonding, as used by NASA in the Section 8(a) program, is a requirement of the Miller Act (40 USC 270a-270e) for construction contracts in excess of \$2,000. The performance bond requirement is intended to protect the Government against failure of the contractor to perform the contract work. The payment bond provides protection for employees, suppliers and subcontractors many of whom are small business and minorities, by ensuring their payment in the event the contractor is unable to do so. This is the paramount consideration in the bonding requirement.

*Question. 13.* If you know, could you breakdown the dollar volume of contracts awarded by:

- (a) Competitive and non-competitive awarding;
- (b) Minority and female contractors; and
- (c) Size of firm.

Answer. Subject to the limitations discussed in 1 above, NASA can provide the listed information.

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## DEPARTMENT OF THE AIR FORCE RESPONSE

### PREPARED STATEMENT

The Air Force presently compiles minority contract award data which is reported to DOD and is available generally to the public. Subcontract award data to minority owned firms is also collected. Collection of prime contract award data is a recent development so we have no experience upon which to assess its quality. The quality of subcontract award data is excellent. These data are consistent and can be aggregated with other government data.

Contract award data on female-owned firms is not collected. The administrative cost of collecting such data for DOD and defense contractors would be in excess of \$5 million annually.

The SBA defines what groups or classes are "socially and economically disadvantaged." DOD minority subcontract data is collected on the DD Form 1140-1 which is completed by most contractors with contracts in excess of \$500,000.

All 8(a) contracts are reviewed by the Air Force for legal sufficiency and fair market price to prevent abuses. Abuses involving eligibility of firms to participate in the 8(a) Program and the selection of contractors is the responsibility of the SBA. 8(a) procurement opportunities are broken out. All proposed new procurements in excess of \$2,500 are reviewed for 8(a) contracting possibilities. Difficulties experienced in dealing with minority and female contractors generally are no different than those encountered in dealing with majority firms of the same size.

The Air Force has utilized innovative approaches to expand participation by minority firms. The minority business enterprise program is not impeded by law. Bonding requirements result either from statute or are based on the business judgment of the contracting officer. DOD can provide a breakdown of the dollar volume of competitive and non-competitive contracts by minority contractors and by size of firm. Data does not exist on female owned firms.

### RESPONSE TO CONFERENCE QUESTIONS

*Question 1.* Please specify the type and form of data your agency compiles and processes on contracts awarded to minority and female owned firms. To whom do you report your findings and in response to what statutory or regulatory requirements? Which of your data are generally available to the public upon request, and which are not?

Answer. The Air Force compiles prime contract award data by name of firm and type of firm (small business, large business or other) on all contracts over \$10,000 under the DD Form 350 reporting system. Prime contract award data is collected in summary form for contracts of \$10,000 or less by type of business under the DD Form 1057 reporting system. Both reporting systems have been changed recently to collect data on the number and amount of contract awards to minority firms. Subcontract award data is reported on the DD Form 1140-1. None of these systems collects data on contracts awarded to female owned firms. Air Force data is reported to the Office of the Secretary of Defense. Generally, all of these data are available to the public.

*Question 2.* What is your assessment of the quality of various aggregate data you regularly maintain? On a scale of 1 to 10, with 1 representing a total lack of confidence, rate the reliability, in your judgment, of the various data you process on minority and female shares of contracting and subcontracting originating with your agency.

Answer. Since the reporting systems for primes have been changed only recently to collect data on contract awards to minority owned firms, we have no experience to evaluate the accuracy of the data. The first full year where we should have such data will be Fiscal Year 1978. The accuracy of the subcontracting data reported by Air Force prime contractors is between 9 and 10 on the scale suggested.

*Question 3.* To the best of your knowledge, are data you report to other agencies of consistent quality and sufficient uniformity of definitions to permit useful aggregation with other such government-wide data? Please identify where incongruencies exist.

Answer. The data on contract awards which we report are of a consistent quality and sufficient uniformity to permit useful aggregation with other government wide data. Such data is provided to OMBE which consolidates the data with that of other agencies.

*Question 4.* If asked, could you develop statistics portraying the shares of contracts issued to minority and female-owned firms and the shares of subcontracts issued by your prime contractors to such firms? If so, how costly and time-consuming would the data processing for such an exercise be (estimate)?

Answer. As indicated above, we are now in a position to develop statistics portraying the shares of contracts issued to minority firms but not female owned firms. We are also able to report shares of subcontracts issued by our prime contractors to minority firms but not to female owned firms. With respect to whether such data could be collected for female owned firms, it should be noted that most of the 25,000 firms that receive contracts in excess of \$10,000 from DOD are corporations. Their stock is widely held and there is no record made as to the gender of the stockholders. In fact, much of the stock is held in trust for others. Thus, it would be most costly for corporations to determine the gender of the beneficial owner of these stockholders. In addition, the administrative cost to DOD in collecting the data and verifying its accuracy even on a sampling basis would be costly. It is estimated that the administrative cost to collect these data for DOD and defense contractors would be in excess of \$5 million annually.

*Question 5.* Does your agency consider women, as a class, among those likely to be "socially and economically disadvantaged" for the purposes of the Small Business Act of 1953?

Answer. The U.S. Air Force has no authority to define what groups or classes are "socially and economically disadvantaged" for the purpose of the Small Business Act of 1953. The Air Force adheres to the definitions promulgated by the Small Business Administration which defines such groups and classes in accordance with applicable SBA rules and regulations.

*Question 6.* What suggestions do you have regarding establishment of uniform government-wide contractor reporting, recordkeeping, and retrieval standards to facilitate availability of trend data on minority and female contracting?

Answer. No suggestions are offered.

*Question 7.* What is your policy, and what objective criteria do you use, to determine what reports you require of which prime contractors regarding subcontracts they enter in fulfillment of their contracts? Do you synthesize, in any cases, minority or female shares of subcontract dollar volume? Are such procedures, such as pro rata application of corporation subcontracting ratios, reasonably accurate methodologically?

Answer. All DOD prime contractors who have a contract containing the Minority Business Enterprise Subcontracting Program clause as set forth in ASPR 7-104.36(b) are required to report awards to minorities on the DD 1140-1 report. This is a standard DOD form which all DOD contractors use to report such data. No data is reported on awards to female owned firms. The Minority Business Enterprise Subcontracting clause is required in contracts in excess of \$500,000 which, in the opinion of the contracting officer, offer substantial subcontracting opportunities. Because the contracting officer has this latitude, the clause and the resulting reporting requirements have not been applied uniformly. Consequently, DOD is in the process of developing more definitive guidelines concerning which contracts will contain the clause and therefore which contractors will report minority subcontract award data. The share of minority award data is not synthesized as such but is actual data except for the allocation

of overhead type contracts which is based generally on total subcontract dollars.

*Question 8.* What objective standards do you apply to identify suspected abuse of non-competitively awarded minority or female set-asides? Are some such standards unique to your agency? Can you suggest others which could be adopted in management control of such contract awards throughout the government?

*Answer.* The only non-competitive awards to minorities made by DOD agencies (there are no set-asides for female owned firms) are those contracts awarded to the SBA under Section 8(a) of the Small Business Act. These contracts are reviewed for compliance with DOD and Air Force regulations concerning legal sufficiency, fair market price, etc. These standards are not unique to the Air Force. We are not aware of abuses in those areas over which the Air Force has responsibility. Abuses pertaining to eligibility and selection of 8(a) contractors are the responsibility of the SBA.

*Question 9.* Does your agency make an effort to break-up contract specifications in ways likely to maximize the prospect of minority firms' qualifying? How do you select contracts to be offered through Section 8(a) subcontracts of the Small Business Administration (SBA)? In your experience, have procurement needs filled through 8(a) subcontracts been processed in as timely a manner as competitively offered contracts? What other problems, if any, have you had coordinating with the Office of Business Development of the SBA?

*Answer.* The Air Force does make an effort to break out procurement opportunities to provide minority firms an opportunity to receive an award under Section 8(a) of the Small Business Act. All proposed new procurements of \$2,500 or more are reviewed by Air Force Small Business Specialists to determine whether they are candidates for the 8(a) Program. Timeliness is a problem in that the responses of the SBA and the 8(a) contractors generally add to the procurement administrative lead time. However, this problem is recognized and is compensated for by adequate procurement planning. The Office of Business Development has been most responsive to our needs.

*Question 10.* What difficulties, if any, has your agency encountered in the performance of minority or female contractors? Please cite examples without implicating particular companies or individuals.

*Answer.* Difficulties experienced in dealing with minority and female contractors generally are no different than those encountered in dealing with majority firms of the same size. Problems that most often occur deal with contract administration and may involve a need for technical or management assistance. SBA should be given greater resources to provide such assistance.

*Question 11.* Has your agency attempted to use innovative approaches to expand participation by minority or female firms? Do you have ideas you could implement if not impeded by certain laws, regulations, or judicial decisions? Do you plan to utilize new approaches in the near future? What ideas might be of general benefit to your colleagues in their efforts? Please be specific.

*Answer.* The Air Force has utilized innovative approaches to expand participation by minority firms. The Armed Service Procurement Regulation does not require a like program for female owned firms. The Air Force minority business contract and subcontract programs are not impeded by law, regulation or judicial decision. We do plan to utilize new approaches in the near future. For example, the Air Force plans to require major system prime contractors to specifically identify minority subcontracting opportunities as a part of their proposal effort. The amount of minority subcontracting participation and the adequacy of the prime contractor's plan will be considered in the award of the prime contract. Also, the minority subcontracting opportunities which are identified will be made part of the contract. In addition, the Air Force plans to sponsor a number of meetings between minority contractors and prime contractors to improve subcontracting opportunities.

*Question 12.* If you require bonding of firms awarded non-competitive minority contracts, is the requirement internally generated, or a product of statute or regulation?

*Answer.* It could be both. Some bonding requirements are required by statute, e.g. certain construction work while other requirements are up to the discretion of the contracting officer. The guidance on the latter is set forth in ASPR, Part X.

*Question 13.* If you know, could you break down the dollar volume of contracts awarded by:

- (a) Competitive and non-competitive awarding;
- (b) Minority and female contractors; and
- (c) Size and firm.

*Answer.* The DOD can provide a dollar breakdown on all data set forth except for female contractors.

CONTRACTS AND PURCHASING UNIT, ADMINISTRATIVE PROGRAMS STAFF, DEPARTMENT OF JUSTICE, RESPONSE

RESPONSE TO CONFERENCE QUESTIONS

(1) At present no data is compiled or processed on contracts awarded to female owned firms. Data on minority firms is reported within the Department of Justice on DOJ Form 354 which is in turn provided to the Department of Commerce, Office of Minority Business Enterprise, on Form MBE-91. This minority business data is provided in response to specific request by the Department of Commerce. However, the revised Standard Form 37, Report on Procurement by Civilian Executive Agencies, published in the Federal Register, September 12, 1977 includes data on minority business enterprises. Therefore we expect that the reporting of the data on Form MBE-91 will be discontinued. All such data is available to the public.

(2) We rate minority data as a 9. We do not maintain data on female owned firms.

(3) Yes, because there are established forms and formats for providing such data.

(4) We already develop statistics for contracts and subcontracts to minority owned firms. Developing similar data on female owned firms would not present any problems and the cost would be minimal.

(5) Determining what groups or firms are "socially and economically disadvantaged" under the Small Business Act of 1953 is the responsibility of the Small Business Administration (SBA), therefore such decisions are not made by the Department of Justice.

(6) The Office of Federal Procurement Policy is responsible for establishing uniform procurement reporting requirements. A study is now in progress to determine the elements to be included in a Federal Procurement Data System.

(7) Data on awards to minority subcontractors is required on contracts exceeding \$500,000.00 in accordance with Federal Procurement Regulation 1-1.309. We do not require any data regarding female owned subcontractors.

(8) Other than the 8(a) program administered by the SBA, we are not aware of any authority which permits "noncompetitively awarded minority or female set asides."

(9) Specifications are reviewed to determine opportunities for minority firms and to select contracts for award to minority firms under the 8(a) program. Generally, 8(a) subcontracts have been processed as quickly as competitive awards.

(10) We have not been experiencing any difficulties with minority contractors.

(11) We have devoted our efforts mainly to review of specifications. Greater concentration by requiring activities on this issue early in the development of specifications might prove beneficial.

(12) We know of no authority to award non-competitive minority contracts except under the 8(a) procedure. In such cases SBA is awarded the contract.

(13) Currently, the Department does not maintain reports on competitive vs non-competitive awards and awards to female contractors. If this information is required, it may be obtained after a search of the contract files. Awards to minority contractors during fiscal year 1976 and the transition quarter totaled \$213,000.00 Awards to small and large businesses during the same period totaled \$6,959.00 and \$12,911,000.00 respectively.

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BUREAU OF PRISONS, DEPARTMENT OF JUSTICE, RESPONSE

RESPONSE TO CONFERENCE QUESTIONS

This response was prepared by staff of the Federal Bureau of Prisons. Opinions expressed herein are not intended to represent those of the Department of Justice.

(1) A semi-annual "Minority Business Development Report" is prepared and forwarded to the Department of Justice in accordance with DOJ Order 2301.6. No data is compiled on female owned firms.

(2) The assessment of the quality of information submitted on the above report concerning prime contracts is rated as eight (8); sub-contracting data is rated as two (2); no data is collected on contracting or sub-contracting with females.

(3) Yes, to our best knowledge, data is consistent and uniform.

(4) Information is available on minority contracts but not female owned-firms. We have no data from which the shares of sub-contracts issued to minority and female owned firms can be developed.

(5) The BOP does not consider women, as a class, socially and economically disadvantaged for the purpose of the Small Business Act of 1953.

(6) We have no suggestions to offer.

(7) The only reports required of contractors are those required by Federal Procurement Regulations.

(8) No standards are applied to check set-asides. No suggestions are offered.

(9) Contract specifications are not broken up for any reason. Selection of contracts to be offered through the 8(a) program is at the discretion of each contracting officer. We have no statistics on the success or failure of 8(a) contracts.

(10) Any difficulties are resolved by each contracting officer without Central Office knowledge.

(11) BOP personnel have met with groups of minority business representatives. At these meetings, and in response to correspondence, listings of BOP institutions have been furnished, suggesting that the representatives contact the institutions contracting officers to make him/her aware of the products or services that are available. For the past three years nationwide workshops with contracting officers have emphasized small business and minority business enterprise programs.

(12) No bonding is required other than those required by the FPR. We require no bonds for services and supplies.

(13) Cost breakdown between competitive and non-competitive awards cannot be obtained under our present input source.

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## FEDERAL BUREAU OF INVESTIGATION, DEPARTMENT OF JUSTICE, RESPONSE

### RESPONSE TO CONFERENCE QUESTIONS

(1) A bidder's list for minority businesses is maintained and used as a possible source of supply when needed. A report on total procurement which includes contracting by minority businesses is submitted every 6 months in accordance with Federal Procurement Regulations. Data regarding the award of contracts is published in the Commerce Business Daily and is available to the public upon request.

(2) The quality of data regularly maintained is good. However, data processed on minority business enterprises will generally depreciate with age.

(3) Yes.

(4) It is not believed that any statistics exist within agency files which could be obtained regarding past contracts issued to prime contractors in regard to shares of subcontracts issued to minority firms.

(5) No.

(6) Additional record keeping by the Government would be expensive and the effectiveness would be dependent upon the value that might be received from the work effort.

(7) Policy is to follow Federal Procurement Regulations for minority business enterprise set forth in Federal Procurement Regulations Subpart 1-1.13.

(8) The only program utilized involving possible set-asides is the Small Business Administration 8(a) program.

(9) It has not been practical to attempt to break up contract specifications in ways likely to maximize the prospect of minority firms' qualifying. Generally, contracts offered through Section 8(a) are General Services Administration contracts and no procurement problems have been encountered, nor has there been a need to coordinate any problems with the Small Business Administration.

(10) No performance problems have been encountered this fiscal year.

(11) This Bureau has sent representatives to minority trade shows in the Washington, D.C. area and also solicits quotations from minority businesses that are listed in "The Buyer's Guide to Minority Businesses" and "Minority Suppliers Report Annual Directory."

(12) No bonding has been required in recent years.

(13) For the period 10/1/76-3/31/77.

(a) Not readily available.

(b) \$25,000—7 contracts.

(c) Unknown.

## CENTRAL INTELLIGENCE AGENCY RESPONSE

While the Central Intelligence Agency does contract with minority businesses, it does not feel that its records of such actions meet the requirements of ASPR Section 1-332.2 on minority business enterprise programs. In an attempt to improve its records, a program was initiated in early 1977 which involves a re-certification from all Agency contractors as to whether they qualify as small business or minority business. Upon completion of this program (early 1978) appropriate changes will be made to the Agency's automated contract information program, data will be input, and a capability for data recall and reporting on contracts with minority business enterprises will be on line.

A substantial amount of CIA contracting is handled on a classified basis and involves either classified or sensitive information on sources and methods which, in accordance with the CIA Act of 1949, the DCI must protect.

In the interest of protecting this sensitive or classified information, the Agency does not report names of contractors, contract values or other specific data on its procurement activities to external parties other than designated oversight mechanisms.

The Agency operates its procurement system to the maximum practicable extent in accordance with the ASPR except in areas such as acquisition of ADPE where the FPR is applicable to all agencies. Mandatory ASPR clauses are included in all contracts.

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 U.S. POSTAL SERVICE RESPONSE

## SUMMARY STATEMENT

1. *General Information*

Postal Service procurement regulations generally closely parallel FPR and ASPR.

Our procurement is small-contract oriented—nearly 95 percent of purchases for equipment, supplies, and services are for \$5,000 or less.

Over 75 percent of our non-directed-source contract dollars are awarded to small business.

2. *Data on Awards to Female- and Minority-Owned Firms*

No data are maintained on female-owned firms, but signatures on our 12,000 highway transportation contracts suggest that at least 17 percent may have been awarded to females.

We began maintaining records on minority awards for construction contracts and subcontracts this summer, and earlier for equipment, supplies, and services contracts; we are working to develop reliable data.

3. *Policies on Awards to Female- and Minority-Owned Firms*

We have not regarded female ownership as a reason for special treatment under small and minority business policies.

We employ SBA lists and make special efforts to attract minority enterprise bids and to follow up solicitations to identify ways to improve minority participation.

Through contract provisions, we require construction contractors to adopt affirmative programs for subcontracting with minority business enterprises and to submit quarterly reports detailing their efforts and results.

## PREPARED STATEMENT

Good afternoon, I am James M. Williamson, Director of the Postal Service's Office of Resources Management, Procurement and Supply Department. My responsibility within the Postal Service relates to procurement for equipment, supplies and services. With me representing our Real Estate and Buildings Department is W. Tood Kite, Director of the Office of Design and Construction; and representing our Mail Processing Department is Robert H. Wieman, Director of the Office of Transportation Services.

### *General Information*

Although most of the general Federal procurement statutes have been made inapplicable to Post Service contracting, we have adopted procurement regulations that closely follow, as a general matter, the GSA Federal Procurement Regulations (FPR) and the Defense Department's Armed Services Procurement Regulation (ASPR). We have tried to design these regulations, which we call the Postal Contracting Manual (PCM), to satisfy both general Federal procurement policies and the particular needs and responsibilities of the Postal Service, which include a requirement for substantial economic self-sufficiency.

To a greater degree than some other agencies, the bulk of our procurement is oriented towards small contracts. For fiscal year 1976, nearly 95 percent of our purchases for equipment, supplies, and services were for \$5,000 or less, and over 99 percent were for \$30,000 or less. Most of our transportation contracts are also small.

The nature of our contracting needs for supplies and services has enabled us to achieve excellent results in contracting with small business. For fiscal year 1976, about \$104 million or 14 percent of our total contract spending was devoted to intergovernmental procurement—mostly from GSA lists. Of the awards that we have made ourselves, data supplied to SBA show that about 77 percent or \$50 million went to small business, with about 23 percent or \$148 million going to large business. Of the total in-house contracting, awards worth \$639 million were competitive and about \$16 million non-competitive. These statistics are capable of being compiled with those of other agencies and are available to the public upon request.

#### *Data on Awards to Female—and Minority-Owned Firms*

The small contract orientation of most of our procurements provides considerable opportunity for minority—and female-owned enterprise to contract with the Postal Service.

We have not kept records on the numbers of contracts and subcontracts awarded to female-owned business. However, before this conference, we did search through our files on our approximately 12,000 highway transportation contracts, using the name of the award recipient to identify contracts awarded to females. This way we were able to identify at least 2,000 of the contracts, about 17 percent, as having been signed by females. Since some names listed only first initials or were not identifiable by sex for other reasons, the actual number probably is larger.

We began to develop the capability to compile data on awards of equipment, supplies, and services contracts to minority businesses about a year ago. This summer we began to keep records on construction contracts and subcontracts awarded to minority firms. To date, we are not satisfied with the quality of our data collection in this area, particularly on the lower dollar-value contracts. We would rate our initial efforts at most a 4 on a scale of 10. We are seeking ways to upgrade these efforts and are confident that some improvements can be made.

On prime construction contracts of \$500,000 or more, our contractors are required to submit quarterly reports on subcontracting to minority business.

We do not favor participation in uniform, Government-wide contractor reporting, including reporting on minority and female enterprise subcontracting. Such a system would have to try to cope with the many different kinds of contracts, and would require the development of data processing, staff, hardware, and software. We believe that such efforts would be unduly costly but do not have reliable estimates of that cost. On the whole, we believe that such a system would be ponderous, bureaucratic, and beset with paperwork.

#### *Policies on Awards to Female- and Minority-Owned Firms*

The Postal Service has not considered female ownership of firms to be a social and economic disadvantage for purposes of our programs to encourage small business and minority enterprise contracting opportunities.

With regard to minority-owned enterprises, the Postal Service coordinates its activities with the Department of Commerce. Our procedures direct contracting officials to make periodic reviews of procurement requirements to select those suitable to be met by minority enterprise and to negotiate and enter into contracts with qualified minority firms at prices that may exceed our estimated cost by as much as 10 percent. We do not have any satisfactory data on such awards to date. In addition, we review the solicitations in which minority enterprise is involved and discuss any problems the firm may have had with the solicitation in order to identify improvements that can be made. The Postal Service does not contract to the SBA for award under section 8(a) of the Small Business Act.

We do not prepare restrictive specifications for the purpose of maximizing prospects of minority firms to qualify.

The type and size of many of our procurements lend themselves naturally to fulfillment by capable small and minority businesses.

Through appropriate contract clauses, we require all construction contractors having contracts over \$10,000 to use their best efforts to see that minority firms have the maximum practicable opportunity to participate in our procurements of construction. Each construction firm whose contract is larger than \$500,000 must establish and conduct a program as specified in our contract clause which will enable minority firms to be considered fairly as subcontractors and suppliers. Each such major contractor also must submit quarterly reports, as specified, describing his program, his contracts with minority firms, and the results of his efforts.

The requirements of the Miller Act for bonding of firms awarded construction contracts exceeding \$2,000—including those awarded to minorities—apply to the Postal Service as a matter of law.

We have encountered some difficulties with minority contractors but no more than would be expected from any small business contractor not fully versed in Government procedures.

On the whole, we certainly regard ourselves today as still in the learning stages in our programs for securing and identifying contracts with minority enterprise. We hope these discussions of mutual needs and problems will be beneficial for the Postal Service.

Thank you.

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## DEPARTMENT OF TRANSPORTATION RESPONSE

### SUMMARY STATEMENT

I am Roger Martino of the Office of Installations and Logistics, representing the Department of Transportation (DOT), and I welcome the opportunity to exchange comments and views in a matter of strong mutual interest—progress in Minority Federal Contracting.

DOT fully endorses the minority contracting program and has had good results from it. DOT's interest, and the increased opportunity afforded to minority contractors to participate in DOT procurement can be gauged to some degree by the growth in program results. Since FY 1973 DOT has been either first, second or third among all civilian agencies in relative participation in the 8(a) program.

While the program is growing and largely successful, it can be improved. DOT generally supports the specific recommendations made in the statement presented by Mr. Richard Frakes of the Federal Aviation Administration.

I believe that it is appropriate to note the fact that the Office of Federal Procurement Policy is actively pursuing the development of government-wide procurement data base requirements through an interagency procurement data committee. DOT is a member of that committee, and believes it is an effective vehicle for consideration of the operational aspects of much of the data needs being discussed here today.

### RESPONSE TO CONFERENCE QUESTIONS

*Question 1.* "Please specify the type and form of data your agency compiles and processes on contracts awarded to minority and female owned firms. To whom do you report your findings and in response to what statutory or regulatory requirements? What of your data are generally available to the public upon request, and which are not?"

*Answer.* The Department compiles data required by the Federal Procurement Regulations (FPR), specifically data required by Section 1-16.804. This Section prescribes the information required to be reported to the General Services Administration on Standard Form 37, Report on Procurement by Civilian Agencies. The information is submitted to GSA on a semi-annual basis. The Department also submits a semi-annual minority business enterprise report to the Office of Minority Business Enterprise, Department of Commerce.

The DOT Contract Information System contains data on contracts by various classifications including large and small business, competitive and noncompetitive awards and minority awards. Our information system does not contain information on female-owned businesses. The data in the Contract Information System is available to the public.

*Question 2.* "What is your assessment of the quality of various aggregate data you regularly maintain? On a scale of 1 to 10, with 1 representing a total lack of confidence, rate the reliability, in your judgment, of the various data you process on minority and female shares of contracting and subcontracting originating with your agency."

Answer. Procurement in DOT is completely decentralized.

The data in the system comes from the procurement offices in the operating elements comprising the Department. Data inputs are reviewed prior to entering the system, and the data, once entered is very reliable. In our opinion, the data on minority contracting would rate 9 to 10 on the scale described.

Prime contractor efforts to subcontract to minority firms is required by two Federal Procurement Regulation clauses. The first entitled, "Utilization of Minority Business Enterprises," is required in contracts in excess of \$10,000 and requires a prime contractor to use his best efforts to utilize minority subcontractors. The second clause entitled, "Minority Business Enterprises Subcontracting Program" is required in contracts exceeding \$500,000 which offer substantial subcontracting opportunities and require the establishment of a positive program to enlist minority subcontractors. This latter clause requires periodic reports from the prime contractor. We generally feel that the extent of the minority subcontracting effort should be determined on a contract-by-contract basis.

*Question 3.* "To the best of your knowledge, are data you report to other agencies of consistent quality and sufficient uniformity of definitions to permit useful aggregation with other such government-wide data? Please identify where incongruencies exist."

Answer. Yes.

*Question 4.* "If asked, could you develop statistics portraying the shares of contracts issued to minority and female-owned firms and the shares of subcontracts issued by your prime contractors to such firms? If so, how costly and time-consuming would the data processing for such an exercise be (estimate)?"

Answer. The requested information on female owned contracting cannot be developed from currently stored data. However, this information *could* be generated, but generation would require the following changes:

*Type of change and cost impact*

Revision to Contract Information System programs and data input forms. (Minor.)

Changes to the Federal Procurement Regulations to provide an adequate definition of female-owned businesses. (Minor.)

The exact cost of developing comprehensive records in the area of female owned business can not be accurately estimated at this time. The major emphasis should be on developing a workable definition of a female-owned firm and determining the "ripple effect" cost of imposing the requirement down through subcontract tiers.

*Question 5.* "Does your agency consider women, as a class, among those likely to be "socially and economically disadvantaged" for the purposes of the Small Business Act of 1953?"

Answer. SBA, under its Act of 1953, has the responsibility for defining socially and economically disadvantaged contractors. DOT operates within the context of such definitions.

*Question 6.* "What suggestions do you have regarding establishment of uniform government-wide contractor reporting, record-keeping, and retrieval standards to facilitate availability of trend data on minority and female contracting?"

Answer. The Federal Procurement Data System, when fully implemented, will standardize required data elements. At present, there is no definition of female owned business, and there is no measure of the cost impact upon the contractor community for collecting such information through several subcontract tiers. Both of these matters need to be addressed before a decision is made with respect to collecting the data.

*Question 7.* "What is your policy, and what objective criteria do you use, to determine what reports you require of which prime contractors regarding subcontracts they award in fulfillment of their contracts? Do you synthesize, in any cases, minority or female shares of subcontract dollar volume? Are such procedures, such as pro rata application of corporation subcontracting ratios, reasonably accurate methodologically?"

Answer. The Department does not synthesize female shares of subcontract dollar volume. Because our experience with the application of corporation subcontracting ratios is limited, we are not in a position to judge whether they are a reasonable accurate methodology.

*Question 8.* "What objective standards do you apply to identify suspected abuse of non-competitively awarded minority or female set asides? Are some such standards unique to your agency? Can you suggest others which could be adopted in management control of such contract awards throughout the government?"

*Answer.* The Department relies on the Small Business Administration to conduct the certification review and certify that a minority contractor is eligible for an 8(a) award. The 8(a) program is undergoing an intensive review by the Small Business Administration and the Department supports that effort. DOT does not attempt to "go behind" the SBA evaluation and certification.

*Question 9.* "Does your agency make an effort to break-up contract specifications in ways likely to maximize the prospect of minority firms' qualifying? How do you select contracts to be offered through Section 8(a) subcontract? of the Small Business Administration (SBA)? In your experience, have procurement needs filled through 8(a) subcontracts been processed in as timely a manner as competitively offered contracts? What other problems, if any, have you had coordinating with the Office of Business Development of the SBA?"

*Answer.* Procurement requests and program requirements are reviewed by a small business and/or minority business liaison representative in each of the operating elements' procurement offices. Procurements, frequently are selected for small business set-asides or 8(a) procurements as a result of such reviews and subsequent liaison with appropriate technical and program officials.

In general, procurements awarded through 8(a) subcontracts have proceeded in a satisfactory manner comparable with other awards. However, delays sometimes develop where it has been necessary to get a minority firm certified by the SBA for the 8(a) program. While it is obviously necessary to keep the number of firms receiving 8(a) assistance to a manageable level, our offices report that there are times when a procurement opportunity may be delayed or lost entirely because of the time required to obtain an 8(a) certification.

With respect to coordination with the Office of Business Development in SBA, our procurement offices have noted that the SBA's ability to provide adequate development assistance to minority firms is seriously limited by the lack of business development expense (BDE) funds. This is particularly true in the construction field where there is an apparent problem in providing substantial assistance although the needs are often critical.

*Question 10.* "What difficulties, if any, has your agency encountered in the performance of minority or female contractors? Please cite examples without implicating particular companies or individuals."

*Answer.* While most minority contracts have been performed in a fully satisfactory manner, some minority contractors have not fulfilled the terms and conditions of their contract within the required period of performance. The statement by the Federal Aviation Administration provides further information on this topic.

*Question 11.* "Has your agency attempted to use innovative approaches to expand participation by minority or female firms? Do you have ideas you could implement if not impeded by certain laws, regulations, or judicial decisions? Do you plan to utilize new approaches in the near future? What ideas might be of general benefit to your colleagues in their efforts? Please be specific."

*Answer.* The Department has systematically attempted to expand the opportunity for participation by minority firms in DOT procurement and in third party contracts under our grants program. We actively seek minority contractors who can provide goods or services which meet our requirements.

The Office of the Secretary has an ongoing program in which minority businesses wishing to do business with the Department can present information on their companies' capabilities to minority business liaison representatives from the operating elements at a single coordinated meeting. Information on how to get on various Bidder's Lists is provided. Follow-up action is initiated where the company has the capability to meet a need of one or more of the operating elements. In July 1976, DOT sponsored a major conference in Washington where the Secretary and the heads of the operating elements discussed minority opportunities under DOT programs with representatives of minority businesses nationwide. The Federal Railroad Administration has established a Minority Resource Center under the provisions of the Railroad Revitalization and Regulatory Reform Act of 1976. This Center assists minority contractors in obtaining their fair

share of prime contracts and subcontracts under the several railroad improvement programs. Periodically, the Department sponsors conferences such as the one entitled "Transportation Research and Development—a Briefing for Industry" held at the Transportation Systems Center in Cambridge, Massachusetts. Invitations are sent to many minority business firms. The purpose of these meetings is to familiarize all of industry with anticipated R&D related contracting opportunities within DOT.

*Question 12.* "If you require bonding of firms awarded non-competitive minority contracts, is the requirement internally generated, or a product of statute or regulations?"

*Answer.* The Department of Transportation is very aware of the difficulties presented by bonding requirements. We have participated, as a member of the Interagency Council for Minority Business Enterprise, in a general Federal Government exploration of possible solutions. We are also engaged in an effort through the Minority Business Resource Center to ease the bonding problems of minority contractors in the railroad revitalization programs. In the highway programs we have waived the Government-wide 100% bonding requirement and accepted the bonding levels which the several States routinely apply. In many instances, these levels are as low as 50% of the contract amount. In the urban mass transportation field, we obtained a waiver of the 100% bonding requirement for the Washington Metropolitan Area Transportation Authority (WMATA). In this case, WMATA had evidence of greater small and minority business participation when WMATA imposed its normal 50% bonding requirements on projects not supported with Federal funds, and that all interested parties were adequately protected at the 50% levels.

On August 24, 1977, the Office of Management and Budget issued Circular A-102 Revised. Attachment B to this circular revises Federal requirements for 100% bonding to allow a Federal agency to "accept the bonding policy and requirements of the grantee provided the Federal agency has made a determination that the Federal Government's interest is adequately protected." We support this approach because it allows for flexible approaches to bonding, while it assures that all parties interests are protected. However, no matter how flexible the Federal requirements are, they can not abrogate the State law concerning the required bonding levels for contracting in each State.

The Department does not support proposals to eliminate bonding requirements entirely because bonding provides protection to suppliers of goods and labor, and offers a form of assurance that construction contractors have the capacity to perform. Since many sub-suppliers are small and minority businesses, the elimination of bonding requirements could work a hardship on the very group of contractors that we are attempting to assist. If bonding is to be eliminated some other measure of protection should be provided to grantees and subcontractors.

One of the obvious solutions to the problem is to increase the Federal capability to provide bonds or to guarantee a substantial portion of privately offered bonds. The Department supports proposals to achieve greater Federal capability in this area.

*Question 13.* "If you know, could you breakdown the dollar volume of contracts awarded by:

- (a) Competitive and non-competitive awarding;
- (b) Minority and female contractors; and
- (c) Size of firm.

*Answer:*

DEPARTMENT OF TRANSPORTATION, OCT. 1, 1976-MAR. 31, 1977

[Dollar amounts in thousands]

		Small business	Other than small business
Total procurement .....	\$472, 630	\$139, 735	\$333, 095
Formally advertised .....	135, 345	51, 178	84, 167
Negotiated .....	287, 633	74, 675	212, 958
Procurement under other agency contractor .....	49, 852	13, 882	35, 970

## SECTION 8(a) AWARDS

[In thousands of dollars]

	SBA sec. 8(a) procurement	Standing among civilian agencies
1970.....	\$894	
1971.....	3,387	
1972.....	7,697	
1973 <sup>1</sup> .....	30,317	1
1974.....	16,523	3
1975.....	23,624	2
1976.....	21,955	2
1977 (6 mo).....	10,767	

<sup>1</sup> In fiscal year 1973 the Federal Aviation Administration and the U.S. Coast Guard awarded several construction contracts of from \$2 to \$3 million each under the 8(a) program.

In addition during the first six months of fiscal year 1977 grantees under Federal Assistance Programs awarded contracts in the amount of \$62,681,000 to Minority Business Enterprises.

## FEDERAL AVIATION ADMINISTRATION RESPONSE

### SUMMARY STATEMENT OF RICHARD F. FRAKES, DIRECTOR, LOGISTICS SERVICE

I am pleased to have the opportunity to attend this conference which is intended to focus on the Federal Government's Section 8(a) minority business program. Through forums such as this, and through collective discussion and analysis, I believe that we can assist in strengthening and improving what is, in my opinion, already a good program.

The FAA's experience with the Section 8(a) Program has been good and we fully endorse and support this worthwhile program. Prior to the inception of the program, although a limited number of minority firms were included in the FAA's contracting process, the participating firms were primarily engaged in offering nontechnical services. Consequently, the resulting dollar awards to minority firms due to the restricted areas of participation, were low. However, after 1970, we began to see minority construction engineers, architects, computer systems analysts, experts in noise abatement, and firms engaged in other aspects of research and development. Their work has contributed significantly toward helping us in promoting aviation safety.

The following statistics, which reflect the percentage of direct contract awards to minority firms compared to total procurement dollars expended, demonstrate our support for the program: fiscal year 1974, 3.7 percent, fiscal year 1975, 6.1 percent; and fiscal year 1976, 6.7 percent.

Although we strongly support the program, we believe there are ways that the program could be improved. For that reason, I would like to identify several areas which we believe should be considered.

#### *Bonding*

We have experienced problems with the ability of 8(a) firms to obtain bonding required by the Miller Act for all contracts over \$2,000. In some cases the FAA has been willing or has already awarded a contract to SBA with a specific 8(a) firm in mind. Later the 8(a) firm was turned down since it could not obtain the necessary bonding. Thus, the bonding requirements of the Miller Act prevent FAA from being able to utilize 8(a) contractors on our construction projects to the extent we would like.

#### *Business Development Expense Funds*

We believe that development assistance to minority firms in the form of business development expense (BDE) funds should be reviewed. In the construction field, SBA has often declined to provide substantial assistance to these firms for needs which we believe to be critical.

BDE permits SBA to make monetary grants to disadvantaged firms which require financial assistance at the time of contract award. Since these are grants funds, the recipients do not have to repay the amounts received. The SBA in its Standard Operating Procedure 60-41-2 lists several conditions for the use of BDE. It states that BDE funds may be utilized where necessary to ensure profitability above the negotiated contract price, where additional financial capability is needed to overcome deficiencies in completing work at a competitive price, and that its use shall be limited to situations essential to program objectives.

We believe our contracting volume with minority firms might increase if BDE funds, especially for assistance to construction firms, were more readily available.

#### *Section 8(a) Certification Procedures*

Another area which causes us frequent difficulty relates to the certification of qualified minority firms by the SBA for the 8(a) program. While we recognize the SBA responsibility for keeping the number of firms receiving 8(a) assistance to a manageable level, there have, nevertheless, been many occasions in which an available procurement opportunity has either been unduly delayed or lost entirely because of the time required to obtain SBA 8(a) certification. This has periodically caused us difficulty when we have attempted to introduce into our contracting process minority firms which we felt could satisfy various FAA requirements. The time delays experienced in assisting them to secure 8(a) certification have resulted in delaying the commencement of their work.

We believe that consideration should be given to refining and speeding up the existing certification process if this can be done without losing control over collecting the information necessary for certification. This would work both to the benefit of the minority contractor and the Federal Government.

I have attempted to be brief in highlighting some of the areas in which the 8(a) program could possibly be improved. While I don't necessarily have specific answers to the concerns I have raised, I believe they warrant attention and consideration.

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## NATIONAL ENDOWMENT FOR THE HUMANITIES RESPONSE

### RESPONSE TO CONFERENCE QUESTIONS

(1) The Federal Procurement Regulations provide for a report on procurement to be submitted to the General Services Administration. In general, compiled data, not precluded under any statute, is available to the public upon request.

(2) Because of the small number of contracts of this agency, our data are quite accurate, numerically they would rate as 9.

(3) No reports are currently submitted to other agencies.

(4) Such statistics are available for prime contracts and were furnished in a somewhat different form to Senator Javits April 21, 1977. Our contracts are small and there are few subcontracts. A rough estimate could probably be developed by telephone inquiries, but it is hard to say if the term "subcontract" as you use it applies to any of our procurements.

(5) This agency has not made a determination on this point, but will adhere to government wide policy on the subject.

(6) Because the procurements of the National Endowment for the Humanities are small both in numbers of contracts and in expenditures, we defer to larger agencies on this matter.

(7) See the answer to No. 4 above.

This agency supports the policy of providing maximum opportunities to participate in the performance of government contracting for small businesses and businesses owned by females or minorities. We bring to the attention of non-small businesses the requirements of Title 41 of the United States Code and applicable regulations requiring that certain subcontracting opportunities be made available to minority businesses.

(8) The abuses referred to have not been a problem for this agency.

(9) Generally our contracts are not susceptible to being broken up because they are small to begin with. Our 8(a) subcontract experience, based on a single contract, has been good.

(10) Our agency has had little or no difficulty with either minority or female contractors.

- (11) Our agency has not been actively innovative in its procurement methods in the past. We will defer to the ideas of larger agencies that do substantially greater amounts of contracting.
- (12) This agency has not required bonding on its contracts.
- (13) During fiscal year 1977 through September 19, 1977:
- (a) \$222,715.12.
  - (b) \$80,093.78.
  - (c) \$222,715.12 for small businesses.

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## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE RESPONSE

Early in 1971 in response to Executive Orders 11458 and 11625, the Department of Health, Education, and Welfare created an office of minority business assistance with a full-time staff to plan, develop, and promulgate Department-wide policy in support of the Minority Business Enterprise Program; and to provide a liaison and advocate role for all departmental activities involving assistance to minority enterprises.

Each year since 1971, the Department has established and met minority business procurement goals. The goals include 8(a), minority business non 8(a), and subcontract. Performance data are summarized on a semiannual basis and reported to the Office of Minority Business Enterprise (OMBE), Department of Commerce. For minority business non-8(a) procurement, the report to OMBE shows number and dollar value of consultant/software procurement, construction procurements, other procurements, and the number and dollar value of 8(a) contracts and non-8(a) subcontracts awarded to minority-owned firms.

The type and form of data available but not reported to OMBE include a description of the requirement, the name of the contractor, the date of award, the type of procurement (competitive, noncompetitive, etc.), the type of contract (cost, fixed price, etc.), the type of contractor (small business, large business, minority business, nonprofit organization, etc.), the purpose of the contract, etc. In our opinion, the data which we submit to OMBE are of consistent quality and sufficient uniformity of definitions as to permit useful aggregation with other such government-wide data. In addition, we would recommend collection of the above types of data as a means of establishing a uniform, Government-wide reporting, recordkeeping, and retrieval system in order to facilitate the development of trend data.

There are no statutory or regulatory requirements for reports regarding minority and female owned firms. Executive Order 11625 is the authority for the report to OMBE. The HEW report is available to the public upon request. Other types of information are also available, but may require a data processing fee. Inasmuch as there is no Federal requirement for businesses to identify ownership by sex, we are unable to provide any information regarding prime or subcontracts awarded to female-owned firms. We would suggest that the Federal Procurement Regulations be amended to require the inclusion of female representation in solicitation documents. This is the current means by which minority firms are identified. For purposes of the 8(a) program, the Small Business Administration (SBA) determines whether or not a firm falls within the category of socially and economically disadvantaged. We do not think they consider women as a class to be in this category.

With the exception of subcontract data, the reliability of our minority business procurement data is high, and would probably rate a score of 9 on a scale of 1 to 10. With respect to our subcontracting program, we follow FPR 1-1.1310, and have no way of determining the reliability of subcontract data since these data are generated by the prime contractor.

The size of our contracts is such that the prospect of minority firms qualifying is excellent. In Fiscal Year 1976, for example, 88% of our contracts amounted to \$100,000 or less. In the 8(a) program, we use an innovative process called limited technical competition, whereby three to five firms are asked to review the scope of work and then submit informal technical proposals. The firms are rated by a review panel, and the name of the highest rated firm is submitted to the SBA for approval. While we have no objective standards which apply specifically to the abuse of noncompetitively awarded contracts, we have specific criteria for justification of non-competitive contractual requirements. As a means of preventing abuse in the 8(a) program, we would recommend that 8(a) firms be

recertified at least once per year. With respect to bonding of minority firms awarded noncompetitive contracts, we have no internal procedures regarding bonding requirement. The bonding of firms for contracts awarded by this Department generally involves construction contracts. In any case, however, we follow FPR 1-10.1 and the Miller Act, as amended (40 U.S.C. 270a-270e).

It has been our experience that the processing of 8(a) contracts requires less time than that for competitively awarded contracts, and the Department's overall experience with minority contractors regarding performance of contract has generally been good. This includes 8(a) as well as non 8(a) contracting. We work very closely with the SBA in connection with the 8(a) program. Problems have been minimal, and our relationship with the SBA has generally been good.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE—SMALL BUSINESS PARTICIPATION

[Dollar amounts in thousands]

Fiscal year:	Total awards, dollar value	Awards to small business		Small business set-aside			Nonprofit awards, dollar value	8(a) award, dollar value
		dollar value	Percent of dollars	Dollar value	Percent of small business dollars	Percent of total dollars		
1972	\$724,947	\$175,852	24.26	\$27,512	15.64	3.8	\$342,089	\$12,980
1973	860,567	208,304	24.19	17,290	8.37	2.3	377,616	9,625
1974	1,219,627	249,200	20.43	32,362	12.99	2.7	662,673	19,561
1975	1,560,863	329,372	21.07	33,102	10.05	2.1	886,702	15,366
1976 (15 mo)	2,082,209	396,936	19.06	30,188	7.61	1.45	987,822	28,200

DEPARTMENT OF STATE RESPONSE

RESPONSE TO CONFERENCE QUESTIONS

The Department of State has actively supported the Interagency Council for Minority Business Enterprise and was a participating member of the Council's Procurement Committee. Though the Department's total procurement dollar is small and due to the nature of our mission, the range of commodities required is extremely wide, the Department fully supports the participation of minority contractors in the expenditure of its procurement dollar.

The response to the questions forwarded by your letter represent our best effort to develop the information requested on very short notice during our end of the fiscal year peak workload period.

The following responses correspond numerically to the list of questions submitted.

(1) The Department's central procurement office compiles raw data on a computer file, breaking procurements into the following categories: Negotiated vs. Advertised, Large Business vs. Small Business, and Minority vs. Non-Minority. The data may be extracted in any format desired. An annual report in summary form is made to the Office of Minority Business Enterprise at the Department of Commerce in accordance with their procedures. The above information is available to the public pursuant to the Freedom of Information Act, however, individual requests require a special computer run and the cost therefor must be assessed. The Department does not collect information on female-owned firms.

(2) The data accumulated is provided by various sources and is introduced into the computer file without verification. In my judgement, our data would rank "7" based on your criteria.

(3) To the best of my knowledge the information collected complies with the requirements of the Federal Procurement Regulations covering this subject matter.

(4) As noted in Question No. 1, percentages of contracts awarded to minority firms could be developed. The available information requested would require use of the Department's central computer. We have not had an opportunity to develop an estimate of the cost to generate such a report. No information is currently available on the portion of subcontracts issued by Department prime contractors to minority or female-owned firms.

(5) The Department has not developed a position regarding the inclusion of women, as a class, under the Small Business Act of 1953.

(6) It is difficult for the Department to recommend reporting or record keeping procedures without a clear definition of the results desired. As a minimum, records to be kept should be confined to quantitative data which would permit automated data retrieval.

(7) The Department's contracts are generally small and cover a wide variety of goods and services. Since our contracts are generally of a competitive, firm fixed price nature, intervention at the subcontract level usually does not exist. We do require contractor conformance with standard clauses published in the Federal Procurement Regulations covering these areas.

(8) The Department has not encountered any problems in this area.

(9) Each requiring office in the Department develops its own specifications, tailored to its unique area of operations, without regard to the type of firm which might be selected to perform under a contract. The Procurement Office's small staff is aware of the Department's policy and attempts to match our diverse requirements against known sources of supply. Our limited experience with the "8(a)" program does not lend itself to a meaningful analysis.

(10) The Department has had an occasional problem with contractor performance, however, we are not aware of any particular problems concerning performance by a minority contractor.

(11) Our limited experience in this area has not led to any innovative approaches to minority contracting.

(12) The Department does not require bonding firms as a class.

(13) The information requested except for female contractors could be developed.

The Department of State believes the above information responds to the spirit and the intent of the questions submitted.

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#### VETERANS' ADMINISTRATION RESPONSE

The following data depicts the Veterans' Administration program for procurement from minority and female contractors. Paragraph numbers correspond to conference questions submitted by the Joint Economic Committee.

(1) The VA compiles data on the number and dollar value of contracts awarded under Section 8(a) of the Small Business Act. We also compile the dollar amount of awards to minority-owned firms through competitive bids. We have not up until now maintained data on female-owned firms. All data are available to the public upon request.

(2) On a scale of 1 to 10, I estimate a reliability of 7 on minority-owned firms.

(3) Yes, data presented are included in government-wide compilations.

(4) Not from current reporting system. On a retrospective basis, it would be impractical at any cost.

(5) No.

(6) Any system established should be compatible with the current reporting system on small business procurement and the developing federal procurement data system.

(7) Generally speaking, we have no uniform reporting system on subcontracting beyond that required by the Federal Procurement Regulations.

(8) We rely on the Small Business Administration to assure equitable distribution among eligible minority firms. Our Supply Auditors, in routine audits, check to determine if there have been violations of policies or procedures. None are unique to this agency.

(9) We set aside goods or services in quantities which are compatible with the capacity of the minority firm. We have on a limited number of occasions broken up contract specifications for construction contracts. We have no limits on the number and type of supply and service contracts we will set aside. We have a construction methods determination board which decides, among other issues, which projects may be set aside for minorities. There have been a great number of instances where timeliness has been a problem, but in *almost* no cases are we able to process Section 8(a) contracts in as timely a manner as competitive contracts. This has been the major problem existing with the office of Business Development, SBA.

(10) The majority of contractors the VA has utilized have performed satisfactorily; however, there have been instances of late deliveries or failure to meet required standards. This has not been a major problem.

(11) The VA and GSA participated in a test program to attempt to "sponsor" five minority firms from their entry into the 8(a) program until they graduated from the program. This entailed detailed coordination with the contractor, the procuring agency, SBA and OMBE. Problems were encountered with the coordination phase and the test program was terminated. At present, there are no new approaches planned.

(12) Bonding is required on construction contracts by the Miller Act.

(13) (a) Competitive	\$402, 598, 000
Non-competitive	\$958, 593, 000
(b) Minority	\$20, 900, 000
Female	Unknown
(c) Size—Small business, competitive and non-competitive	\$749, 996, 000
Other than small business	\$612, 195, 000

These figures include fiscal year 1976 plus the transition quarter.

## U.S. GOVERNMENT PRINTING OFFICE RESPONSE

### SUMMARY STATEMENT

#### 1. General Information

The Government Printing Office uses the Federal Procurement Regulations and Armed Services Procurement Regulations as guides when they do not conflict with other laws and regulations imposed on the agency.

The majority of our procurements are small purchases. Approximately 94 percent of GPO's procurements are under \$10,000, and it is estimated that about 90 percent of our contracts are awarded to small business firms.

#### 2. Procurement Policies

The Government Printing Office is listed in SBA's Purchasing and Sales Directory. Efforts are made to attract minority enterprise bids, and to improve minority participation. A booklet, "How to do Business with the GPO", is available to all contractors.

Female ownership has not been considered a reason for special treatment under small and minority business procedures.

Construction contractors are required to adopt affirmative action programs for subcontracting with minority businesses by the provisions of the contracts.

#### 3. Contractor Data

The Government Printing Office keeps no statistics on female-owned firms, because they have not been included in the category of minority-owned and operated business enterprises.

Information on prime contractors regarding subcontracts they enter in fulfillment of their contracts is limited, since few GPO contracts require extensive subcontracting.

## OFFICE OF MANAGEMENT AND BUDGET RESPONSE

Memorandum for: Office of Federal Procurement Policy Contact Points.

Subject: Federal Register Notice for Comment: Data Elements for Federal Procurement Data System.

The notice for comment was published in the *Federal Register* on August 23, 1977, vol. 42, No. 163, page 42412. The notice requests comment on two data elements proposed for inclusion in the Federal Procurement Data System (FPDS).

The FPDS is targeted to become operational September 30, 1978. Under this new Government-wide procurement data system all executive branch departments and agencies will report uniform procurement data elements to a central data center on a quarterly basis. Two new data elements are proposed for the FPDS which are not now available in the contracting offices and therefore must be requested of prospective contractors. For this reason agency and private sector comments are requested.

Your comments are requested on or before September 30, 1977.

WILLIAM W. THYBONY,  
Assistant Administrator for Contract Placement.

## ANDRULIS RESEARCH CORP. RESPONSE

The attached position paper, entitled "Alternatives for Federal Assistance to Women in Business," provides suggestions as to how women as a group might be reasonably classified, and on what specific programs could be developed for each of the alternative classifications set forth.

## ALTERNATIVES FOR FEDERAL ASSISTANCE TO WOMEN-IN-BUSINESS

(By Marilyn W. Andrulis, Ph. D., President, Andrulis Research Corp.\*)

## PREFACE

The concepts contained in this position paper were submitted to the Senate Select Committee on Small Business in November 1976 and have been under discussion with members of staff since that date.

In December 1976, the President of the National Association of Women Business Owners (NAWBO) stated that one of the reasons for establishing NAWBO was to "convince the Federal Government to include women \* \* \* in its special program for minority enterprises."<sup>1</sup> In an effort to dissuade NAWBO from such a stance, on Jan. 15, 1977, the author presented the Board of Directors with the portion of this paper dealing with why women should seek a new classification rather than that of the minority. Although NAWBO is not seeking administrative or statutory legislation for a new classification, the Association has since determined to advocate that women not be considered minorities.

## EXECUTIVE SUMMARY

This paper examines the evolution of Federal assistance and protection to small business persons. In the paper it is reasoned that the legal precedents of the Small Business Act and of Executive Order 11625 permit the Federal Government to legally recognize an heretofore unprotected and unassisted group of business persons: small businesses owned or controlled by one or more women.

The paper addresses the apparent trend that is developing to group women as minorities and cites the Railroad Revitalization and Regulatory Reform Act of 1976 in which women are included as minorities as the first such Federal law in this direction. Although such a grouping should benefit minority women, it does not necessarily follow that it will benefit nonminority women; and, since nonminority women constitute approximately 90 percent of all women-in-business, and would find it difficult or impossible to qualify under the basis of being socially or economically disadvantaged, it is an issue that needs to be considered. In addition, the potential for competition arising from placing two struggling groups, namely minorities and women, into one grouping, is suggested to be a move which, if additional funds are not identified to accommodate an increase in the eligibles, can only be unfair to minorities.

Based on the assumption that women are to be viewed as a separate constituency from that of minorities, three alternatives for Federal assistance to women-in-business are offered: (1) by Executive order, establish an Office of Woman Business Enterprise in the Department of Commerce, to spearhead a program for Woman Business Enterprise paralleling that now in existence for Minority Business Enterprise; (2) administratively, establish a Low-Sales, Small Business classification (into which over 98 percent of all women-owned businesses would fall) and provide, among others, special marketing assistance, and special set-asides for low sales, small businesses; (3) administrative modification of the use of section 8(a) of the Small Business Act to provide assistance and procurements to minorities and women. The third alternative requires that the funds available for procurements should be increased to reflect the increased number of eligibles.

1. *The Precedent of Federal Assistance to Small Business: An Historical Perspective*

Smallness: The Requirement for Protection.—In the early 1950's it was first recognized that the inadequate treatment of small business enterprise posed a serious threat to the very essence of the American economic system of private enterprise—that of free competition. Obstacles facing small business enterprise

\*The Andrulis Research Corporation is a woman-owned, small business which is engaged in research and development, primarily for the Federal Government.

<sup>1</sup>Speech of Mary E. King, Governor's Conference for Tennessee Women in Business, Hyatt-Regency Hotel, Nashville, Tenn., Doc. 2, 1976, entitled, "Women in Business."

were considered to be of such a magnitude as to require Federal assistance if the small businesses were to be enabled to contribute to their fullest. In this light, a policy was set forward by Congress stating that "only through full and free competition can free markets, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment be assured \* \* \* Such security and well-being of this Nation cannot be realized unless the actual and potential capacity of small business is encouraged and developed." It was "the declared policy of the Congress that the Government should aid, counsel, assist, and protect insofar as is possible the interest of small business concerns \* \* \*". In mid-1953, the Small Business Administration was established to "make loans, guide Federal procurement, provide management training and be the advocate of small business."<sup>2</sup>

**Special Groups: The Requirement for Protection.**—Not until 1969 was it further recognized that there could exist special groups which were struggling for entry into the business enterprise system and who had special needs which required special government aid, counsel, assistance and protection. In fact, "the opportunity for full participation in our free enterprise system" by a special group of people was reasoned by President Nixon in Executive Order 11625 to be "essential if we are \* \* \* to improve the functioning of our national economy." The target group of Executive Order 11625 consists of members of minority business enterprise. For purposes of the Executive Order, Minority Business Enterprise is defined as:

"\* \* \* a business enterprise that is owned or controlled by one or more socially or economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background or similar cause. Such persons include, but are not limited to, Negroes, Puerto Ricans, Spanish-speaking Americans, American Indians, Eskimos, and Aleuts."<sup>3</sup>

## 2. *Women-Owned Business: Among the Unprotected*

Women-owned businesses, a constituency whose members are plagued by low-sales and with special needs for successful entrance and survival in the entrepreneurial mainstream, are as yet without proper representation.

**Smallness.**—Documentary evidence as to the size of woman business enterprise is available in the 1972 Census Bureau survey of women in business. A report on the survey found that, whereas women constitute a majority of the entire population, women business enterprise numbered less than 5 percent of all (large and small) business enterprise; and had an even more strikingly disproportionate share of only three tenths of 1 percent of the total dollar receipts. Another finding in the survey is that 98 percent of all woman business enterprise was being performed under the business form of a sole proprietorship. The average woman owned sole proprietorship was found to have sales below \$25,000; the average woman-owned corporation was found to have sales below \$100,000 and a staff consisting of four members. Finally, minority women were found to have grossed approximately one tenth of the total receipts of nonminority women.<sup>4</sup>

The statistics on gross receipts obtained by women in business indicate that "full and free competition \* \* \* for the expression and growth of personal initiative and individual judgment"<sup>5</sup> are not being assured for women as a group. The case is even more pronounced for the minority woman business entrepreneur.

**Special Group with Special Needs.**—History demonstrates that society as a whole has not sanctioned the woman business entrepreneur, and that many women who are in business have entered the enterprise system by default and/or by necessity due to the death of a male family member who had initiated the business.<sup>6</sup> A 1975 statement by the Chairman of the Civil Rights Commission explicitly acknowledges that "\* \* \* female entrepreneurs \* \* \* encounter a great deal of skepticism regarding their ability to perform adequately on government contracts." In the same statement, it is noted that "\* \* \* female entrepre-

<sup>2</sup> "From Probation to World Renown." The U.S. Small Business Administration, Its History and Development." Ray E. Stull, S#191, (202) 382-6933, July 30, 1973.

<sup>3</sup> Executive Order 11625, "Prescribing Additional Arrangements for Developing a National Program for Minority Business Enterprise," (Rev. 1, Chg. #4—January 1972), 36: F.R. 19967.

<sup>4</sup> "Women-Owned Businesses 1972." U.S. Dept. of Commerce, Bureau of the Census and the Office of Minority Business Enterprise, WB 72.

<sup>5</sup> "From Probation to World Renown." The U.S. Small Business Administration, Its History and Development." Ray E. Stull, S No. 191, (202) 382-6933, July 30, 1973.

<sup>6</sup> *Enterprising Women*, by Caroline Bird, a Mentor Book, New American Library, Times-Mirror, New York and Scarborough, Ontario, 1976.

neurs \* \* \* encounter problems of staggering proportions in obtaining information of Federal, State and local government contracting opportunities in time to submit timely bids; and in obtaining the working capital necessary for effective marketing and bidding."<sup>7</sup>

### 3. *The Carter Commitment*

In one of his preinaugural addresses, President Carter promised that the involvement of women in business enterprise and in Federal Government decisionmaking policy would be a major concern of his administration. Of particular import to women entrepreneurs is Mr. Carter's recognition of the exclusion of women-as-a-group from the assistance provided by the Small Business Administration. Specifically, Mr. Carter promised that when he became President, he would assure the following, among others, for women:<sup>8</sup>

Business assistance from the Small Business Administration with loan guarantees, financial advice and contract support that is now absent from the life of the woman entrepreneur:

the "curbing of unfair economic practices such as discrimination against women in obtaining credit and insurance" because women in particular have been held back by these unfair practices;"

The directing by Mr. Carter of the Office of the Federal Contract Compliance Programs in the Department of Labor "to enforce the Executive order<sup>9</sup> forbidding discrimination by Federal contractors or subcontractors. This will help women as employees and as business owners in having a fair share of Government contracting."

Specific employment opportunities for women were also addressed by Mr. Carter regarding high level, decisionmaking/policy roles in the Departments of Commerce and of Labor in which women could influence Government procurement practices, targeting contracts to women in business. Recognizing the under-representation of women in the Federal Government, "especially in the supergrades," Mr. Carter promised that he would "insist on hiring policies that will bring far more women into top grades throughout the entire government."<sup>10</sup>

### 4. *The Current Trend: Women as Minorities*

There is a current effort to include women as members of the minority classification, to enable women business owners to benefit from the existing legislation which covers minority business enterprise. There is an observable polarization among women leaders as to whether women-as-a-group should be considered as minorities for purposes of Government contracting and/or employment practices with many women leaders arguing that women should take advantage of all avenues available, as for example, the modification of existing legislation. Women's groups worldwide, including the International Women's Year Commission, and until recently, the National Association of Women's Business Owners, are pressuring for immediate alleviation of the prejudicial treatment of the woman entrepreneur through inclusion into the minority grouping.<sup>11 12</sup>

The rationale for including women in the minority category seems to derive from the opinion that lack of opportunity to develop and maintain a competitive position in the economy is because of cultural, social or economic disadvantages.<sup>13</sup> The position is espoused in detail and strengthened by statistics and examples in the Civil Rights Commission report on "Minorities and Women as Government Contractors," published in 1977.<sup>14</sup>

In the Civil Rights Commission report, females are cited as experiencing similar, if not identical, obstacles to conducting business as do minorities. The

<sup>7</sup> "Minorities and Women as Government Contractors," U.S. Civil Rights Commission, 1975.

<sup>8</sup> Speech given before the U.S. National Women's Agenda Conference, Oct. 2, 1976, Washington, D.C. by Governor Jimmy Carter.

<sup>9</sup> Executive Order 11426, 1969, President L. B. Johnson.

<sup>10</sup> Speech given before the U.S. National Women's Agenda Conference, Oct. 2, 1976, Washington, D.C., by Gov Jimmy Carter.

<sup>11</sup> "Minorities and Women as Government Contractors," U.S. Civil Rights Commission, 1975.

<sup>12</sup> "Extending Services of Women Entrepreneurs in Government Business," recommendation by Women in Employment Committee, approved by the International Women Years Commission on Feb. 27, 1976.

<sup>13</sup> "Extending Services of Women Entrepreneurs in Government Business," recommendation by Women in Employment Committee, approved by the International Women Years Commission on Feb. 27, 1976.

<sup>14</sup> "Minorities and Women as Government Contractors," U.S. Civil Rights Commission, 1975.

report observed that the policy to exclude white women from the special 8(a) program is administrative rather than statutory. This interpretation is supported by the precedent of admission of a new member to the minority group (Vietnam veterans were added to 8(a) benefit programs in 1973) and was used by the IWY to recommend to the President as "amendment of Executive Order 11625 to add women to its coverage and to programs administered by the Office of Minority Business Enterprise."<sup>15</sup>

The trend has culminated in the first legislation specifically intended to assist women. In the Section 906 of the Railroad Revitalization and Regulatory Reform Act of 1976, women were for the first time included in a minority assistance program. Section 11(e), the last sentence of the Act, reads as follows:

"(e) As used in this section, the term 'minority' includes women." Approved February 5, 1976.

##### 5. *Why Women Should Not Be Included in the Minority Grouping*

It is predictable that Government, appropriately sensitized to reasonable demands by women, will eventually include women in the minority grouping. There is, however, evidence of an important problem associated with this solution: that the law will recognize and protect the minority woman in business, but not necessarily the nonminority woman.

Item: When pressured to include women in its 8(a) assistance program, the SBA maintains "that women as a group are not eligible, though individual women may be."<sup>15a</sup>

Item: In direct response to the IWY conference findings, the Office of Minority Business Enterprise reevaluated the participation of minority women in its program. Since the IWY conference, the OMBE has devised a special outreach program to reach minority business women with pertinent information on services available to them.<sup>15b</sup>

Behind these reactions is the following: the required criterion for participation in minority programs is that one be able to document being "socially and economically disadvantaged," a position unquestionably defensible by the black woman, the Chicano woman, the Indian woman, the Aleut woman, to name a few. Those women in business who can document that their heritage is one of poverty, prejudice and lack of educational benefits, could and should qualify for entry into the SBA's 8(a) business development program.

Thus, although potentially beneficial to minority women, the explicit inclusion of women into Minority Business Enterprise does not per se assure 8(a) assistance to nonminority women because of the very nature and definition of eligibility criteria (vide supra).

There are several additional reasons for not including women in the minority classification:

- (a) The potential for competition arising from two struggling groups, minorities and women, vying for the same funds;
- (b) The reasoning by SBA that women are, in fact a majority; with only some (minorities) among them being socially and economically disadvantaged;
- (c) Nonminority women in business who document business disadvantage because of prejudicial treatment may not be considered eligible for benefit.

Of these arguments, perhaps the first is the most troublesome. After years of neglect, minorities have now been recognized as needing Government assistance and protection to enter the free enterprise system. If, now, women are added to the minority classification, then the benefits available under the SBA 8(a) business development program for those socially and economically disadvantaged, will be stretched thin in the sharing process. The inclusion of women as a group into the minority classification is basically unfair to minorities, unless the sector of the appropriations pie now cut for minorities is enlarged to accommodate an additional group of eligibles, namely, women.

Second, because women as a group constitute more than 50 percent of the population, they are, in numbers, a majority. Some women are indeed socially and economically disadvantaged, such as minority women, and would be eligible

<sup>15</sup> "Extending Services of Women Entrepreneurs in Government Business," recommendation by Women in Employment Committee, approved by the International Women Years Commission on Feb. 27, 1976.

<sup>15a</sup> *Ibid.*

<sup>15b</sup> *Ibid.*

for admission to the 8(a) program. It can be reasoned that women in business are a minority, but in the sense of numbers and sales, not in the sense of emanating from a heritage of poverty and social neglect.

The third argument focuses on the current eligibility requirements of the 8(a) business development program. The 1972 Census Bureau statistics showed that approximately 90 percent of all women-owned business are nonminority. Many of these business owners would be reluctant to seek Government assistance because of the 8(a) application requirement for documenting social and economic disadvantage. For the majority of nonminority business women, this could only be done by documenting gross prejudicial treatment they encounter in their business dealings, which have resulted in economic disadvantage to their businesses. The experience of documenting such encounters could be quite humiliating. In addition, the realization that the 8(a) application review is highly subjective in nature, and is conducted by men, could preclude many women from seeking Government assistance they need and deserve.

#### *6. Alternative Approaches for Federal Assistance to Women-in-Business*

On the assumption that women are to be recognized as a constituency separate from that of the minority grouping, three alternatives to assist women-in-business are put forth. Two alternatives require the establishment of a new classification for purposes of Government assistance and protection. The third alternative, perhaps the simplest administratively, requires an expansion of an eligibility requirement of the 8(a) program, and an appropriate expansion of procurement opportunities. The first new classification, that of Woman Business Enterprise, would readily generate statistics enabling a longitudinal as well as cross-sectional measurement of women-in-business. The second new classification, that of low-sales, small business, a category into which almost all women owned business falls, would require administrative guidelines to trace loans and procurements flowing to women-owned businesses.

##### *6.1. A woman Business Enterprise Program to Parallel the Minority Business Enterprise Program*

The following three recommendations directly parallel the existing Government programs for Minority Business Enterprise; the fourth recommendation is an adaption, in that procurement assistance for MBEs is provided administratively through the 8(a) business development program.

1. Define Woman Business Enterprise for the purpose of Federal assistance and procurement.—The precedent for legally defining a special group of people who are in need of special assistance and programs is set forth in Executive Order 11625 in which Minority Business Enterprise, is defined. The precedent for protecting business enterprise defined in terms of size alone is set forth in the establishment of the Small Business Administration.

For purposes of this new Executive order, Woman Business Enterprise can be defined as follows:

“A business enterprise that is owned or controlled by one or more women who, though talented, skilled and/or educated, are inhibited from joining into full and free competition in the free enterprise system as a result of (a) established credit practices which have heretofore favored men, (b) attitudinal predispositions as to the inability of women to be entrepreneurs, and (c) the preferential treatment being rendered to men and minorities by the existing federal government programs.”

Points (b) and (c) were explicitly cited in the Civil Commission report of Reference 6.

2. Establish an Office of Women Business Enterprise in the Department of Commerce; prescribe arrangements for developing and coordinating a national program for Woman Business Enterprise.—The precedent for establishing the mechanism for implementing a policy decision to assist a specially recognized group is set forth in the establishment of the Office of Minority Business Enterprise in the Department of Commerce and in the Executive Order 11625 which is entitled, “Prescription of Arrangements for Developing and Coordinating a National Program for Minority Business Enterprise.”

3. Place qualified women in relevant high-level management positions in the Department of Commerce, Small Business Administration, among others, to assure a representation of woman business enterprise.—The precedent for enabling members of specially recognized groups to participate in the planning and execution of programs relevant to their interests is set forth in the presence of members of minority groups being placed in management positions in the Office of Minority Business Enterprise and in the SBA, among others.

4. Provide set-asides for woman-owned business.—The precedent for set-asides is an established practice for two classifications: regular small business and minority business enterprise (assisted through the 8(a) business development program). The IWY Commission specifically recommended that the President “direct all contracting agencies to increase the percentage of the annual dollar amount of procurement contracts awarded to women-owned businesses \* \* \*”<sup>16</sup>

### 6.2. *Low-Sales, Small Business Classifications*

The rather imprecise definition of small business, ranging from sales less than \$7 million per year, or 500 employees for service firms, to 1,500 employees for manufacturing firms, does not take into account the special needs of the many for-profit ventures that gross well below \$1 million per year. These businesses, coined as “low-sales, small businesses,”<sup>17</sup> have many pressing needs, among which are marketing and financial needs. Since 98 percent of women-owned firms are sole-proprietorships which gross less than \$25,000 per year,<sup>18</sup> women-owned firms would be eligible for assistance and protection under an SBA-administered Low-Sales, Small Business program.

Specifically, the SBA could address the special needs of low-sales, small businesses by any or all of the following proposed actions:

1. Provide marketing assistance. Low-sales, small businesses have the resources to introduce their goods and services to but a handful of potential customers. However, SBA could establish formal lines of communication by classifying low-sales, small business according to capabilities and notifying potential buyers of the existence of their goods and services. In addition, SBA could certify the business competency of those low-sales small businesses in past contractual efforts, specifying that performance was satisfactory and remained within time/cost constraints.

2. Establish low-sales, small business set-asides.

3. Request modification of ASPR and FPR to assure interest paid on loans required for the purpose of doing government contract tasking being considered an allowable expense (i.e., chargeable to the contract).

4. Establish contract financing to prevent the burden of documenting credit rating and of supplying personal collateral to obtain loans to alleviate cash flow associated with undertaking government contract tasks.

5. Investigate the 1976 modification to ASPR (DPC Number 76-3, September 1, 1976) which established a method for calculating allowable fee based on equipment purchases/inventory to determine if this modification significantly disfavors small business, particularly low-sales small business.

### 6.3. *Use of Section 8(a) of the Small Business Act to Assist Women-in-Business*

A means for non-competitive procurements, Section 8(a) of the Small Business Act, authorizes the Small Business Administration to “accept prime government contracts from other government agencies and thence to subcontract the performance to small businesses. Since 1968, the SBA has used this authority to place contracts with eligible firms as a means of supplementing their commercial or competitive sales”<sup>19</sup>

Many women-in-business suffer from attitudinal predispositions (prejudices) which are difficult to prove, and, if submitted to the SBA as a claim of disadvantage, may not be found acceptable by the male-dominated, subjective 8(a) applicant review process. However, since the policy that only socially and economically disadvantaged persons are eligible for contracts on a non-competitive basis through the SBA is administrative, not statutory (Reference 6), the policy could be modified to permit assistance to be given by the SBA to women as a group, as well. The 8(a) business development program would thenceforth be for minorities and women, rather than minorities alone.

If such a policy is implemented, the 8(a) funds must be increased to accommodate the enlarged group of eligibles; otherwise, minorities who are currently benefiting will be adversely affected by the necessity of sharing business opportunities with an expansion of eligibles.

<sup>16</sup> “Extending Services of Women Entrepreneurs in Government Business,” recommendation by Women in Employment Committee, approved by the International Women Years Commission on Feb. 27, 1976.

<sup>17</sup> Washington Post Editorial entitled “Can Small Business Survive,” by M. Andrulis, Oct. 14, 1976.

<sup>18</sup> “Women-Owned Business 1972,” U.S. Dept. of Commerce, Bureau of the Census and the Office of Minority Business Enterprise, WB 72.

<sup>19</sup> Hearings before the House Subcommittee on Minority Business and General Oversight on the Small Business Administration and Minorities, May 1975.

## ACKNOWLEDGMENT

The author has been fortunate in the development of this position paper to be able to receive extensive information, support and critical appraisal of her approach from an extremely diverse and talented group of women. They include (in alphabetical order):

Anne Blackwell, Office of Federal Contract Compliance Programs, Department of Labor.

Eve Grover, Vice President, State National Bank.

Diane Kamino, Staff Member, Senator Javits' Senate Select Committee on Small Business.

Mary King, Deputy Director, ACTION.

Denise Loftus, Consultant, Andrulis Research Corporation; Director, Continuing Education, Trinity College.

Janice Mendenhall, Director, Federal Women's Program.

Dona O'Bannon, President, NAWBO; partner, Alcalde, Henderson, O'Bannon and Kline.

Lorri Simmons, Vice President, WLS, Design Associates Ltd.; advocate and lobbyist for small business and for American Indians.

## ATTACHMENT 1

THE WHITE HOUSE, *September 12, 1977.*

## STATEMENT BY THE PRESIDENT

During the last decade the Federal government has played a crucial role in stimulating the development of minority businesses in this country. Working in partnership with private enterprise, the government has sought to promote participation in our economy by entrepreneurs from socially and economically disadvantaged segments of society. There have been some successes and some failures in these minority business development efforts, but the important benefits to society to be gained from these efforts have never been questioned. Building strong minority business enterprises is in the national interest because they contribute to our efforts to reduce unemployment and to stimulate community development.

It is the policy of this Administration to promote the development of minority business enterprise. The experiences of the past decade show that the Government cannot solve all the problems in this area, but government at all levels has an important leadership role. This Administration will actively support minority business development, and we strongly encourage the private sector to increase its involvement in this area. The overwhelming majority of existing minority businesses are in the retail and service fields. While I am confident that businesses in these areas will continue to prosper, it is my hope that we can promote the participation by minorities in industries with growth potential such as energy and telecommunications, where opportunities for development are greatest.

I have discussed this matter with the members of my Cabinet and found enthusiastic support among them for the Federal government's promotion of minority business development. Some departments already have ongoing minority business development activities, but others do not. We must improve the performance of existing activities and create programs in other departments in recognition of the fact that all departments of government have a role to play in minority business development.

I intend to rely on the Interagency Council, chaired by Sidney Harman, the Under Secretary of Commerce, to promote, coordinate and monitor federal programs relating to minority business enterprise. The Council should meet regularly to make certain that the issue of minority business development receives the attention of policy-makers at the highest level of the government.

In order to provide a focus for our efforts and to set achievable goals for this Administration, I have taken the following actions:

First, I fully endorse the efforts underway to revamp and improve the SBA Section 8(a) program. Vernon Weaver has established an 8(a) Review Board. I have asked him to move expeditiously and to consult with interested members of Congress and other concerned citizens to make certain that this key program operates in the most efficient, effective and fair manner possible. We should not

permit our disappointment at the manner in which this worthwhile program has been administered in the past to diminish our desire to make it work.

Second, I have instructed all Executive departments to work with the Office of Minority Business Enterprise and the Small Business Administration to devise effective minority business assistance programs.

Third, I have asked the Office of Federal Procurement Policy to review and to revise procurement regulations to assure adequate involvement of minority and small business firms by requiring that recipients of major federal contracts show how they will involve minority and small businesses before rather than after a contract has been awarded.

Fourth, I have requested that the Treasury Department, as an Interagency Council member, lead a task force to prepare a report on sources of capital and mechanisms for financial assistance for minority business.

Finally, I have instructed all Executive departments to double their purchases of services from minority firms through direct and indirect procurement activities during the next two fiscal years and to report to me on their progress in meeting this goal. This increase should raise the level of Federal government purchases from minority firms to about one billion dollars. We will closely monitor the effort of each department to see that this goal is achieved.

I believe that we should improve and strengthen existing programs rather than make wholesale changes at this time. However, we will assess the operation of these programs under their new leadership, and we will not hesitate to recommend changes where they seem warranted.

These steps provide a good beginning for our efforts in this area. We will show steady and sustained progress throughout my term of office in promoting the development of minority business enterprise.

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## ATTACHMENT 2

### MINORITY BUSINESS ENTERPRISES SUBCONTRACTING PROGRAM

Clause 30 entitled "Utilization of Minority Business Enterprises," of Standard Form 23-A is supplemented as follows:

1. The contractor shall subcontract with minority business firms in an amount aggregating not less than 20 percent of the total dollar value of his subcontracts. The contractor shall have the right to determine which materials, supplies, equipment and/or work is to be subcontracted to or purchased from minority business firms in order to meet the percentage specified above. For purpose of meeting the goal commitments required hereunder; the contractor may include *only* the amount of:

- (a) Each first tier subcontract with minority business enterprise,
- (b) Each subcontract between a first tier subcontractor which is not a minority business enterprise and a second tier subcontractor which is a minority business enterprise, and,
- (c) Each subcontract awarded to a minority business enterprise at any lower tier provided that none of the higher tier subcontracts in the chain of subcontracting, is a minority business enterprise.

A subcontractual relationship for the purpose noted above shall include subcontracts, purchase orders, letter agreements, letter of intent or other similar contractual arrangement.

2. (a) Within 5 working days after award of this contract, the contractor shall submit to the contracting officer on the certificate of compliance form attached hereto, the names and addresses of all the minority business subcontractors he will use, or from whom he will purchase materials, supplies, or equipment, in performing the contract, the amount of each subcontract, and the aggregate amount hereof

(b) If the aggregate amount of the minority business subcontract awarded or to be awarded is less than the specified percentage, the contractor will be deemed to be in breach of his contractual obligation unless he submits, within such time as the contracting officer may allow (but not more than 15 calendar days from the date of the request) information which the contracting officer deems adequate to demonstrate that the contractor has made every reasonable good faith effort to meet the requirement. Information furnished to show that a reasonable good faith effort was made shall include at least the names of each firm solicited for a quotation on each subcontract, the price quoted by each, whether or not the firm solicited was a minority business, the reason for not subcontracting with a minority business firm when applicable; efforts by the contractor to supplement

its own lists of minority business sources by contacting the Small Business Administration, trade organizations, the General Services Administration, minority contractors organizations, community organizations and other likely sources of names of additional minority business sources with potential interest in competing for subcontracts; showing that quotations had been solicited from a sufficient number of minority business firms, capable of performing the work or furnishing the materials, as to have supported a reasonable expectation by the contractor of being able to meet the percentage requirement or that no such minority source competition existed; and all other efforts made by the contractor to meet the percentage requirement.

(c) If the contracting officer finds that the contractor has not awarded the specified percentage of subcontracts to minority business firms and has failed to demonstrate that he made a reasonable good faith effort to comply, he shall have the right to terminate all or a portion of the contract for default, in which event the contractor and his surety shall be liable to the same extent as in the case of termination pursuant to Clause 5, SF 23-A. Alternatively, the contracting officer may elect to allow the contractor to complete performance of the contract, but his breach of this clause of the contract shall be taken into consideration and given weight in determining whether the contractor is "responsible" in the award of future contracts.

3. In the event the contractor fails to award a subcontract to a minority business firm, or terminates a subcontract with a minority business firm, who was included in the submission required under paragraph 2.a. above, the contractor shall so notify the contracting officer and, in addition, shall subcontract with another firm who is a minority business or demonstrate that he made every good faith effort and had valid and justifiable reason not to award to a minority business firm.

4. The bidder shall keep the requirements of this clause in mind in soliciting quotations for purposes of preparing his bid particularly if a subcontractor listing is required as part of the bid. The obligation to meet the requirements of this clause will not, alone, be grounds justifying substitution under the provisions of the "Listing of Subcontractors" clauses, Special Conditions; and conversely, the contractor will not be deemed to have made a good faith effort to meet the requirements of this clause if he completed the "Supplement to Bid Form-List of Subcontractors" in such manner as to preclude meeting the obligations under this clause.

5. Fulfillment of the requirements of this clause shall not be deemed to relieve the contractor from otherwise applicable provision of Clause 30 of Standard Form 23-A.

*General Services Administration*

CERTIFICATE OF COMPLIANCE WITH APPENDIX

(MINORITY BUSINESS ENTERPRISE—EXECUTIVE ORDER 11625)

I. Minority subcontractors participating in project under contract number

-----:  
 Name of contractor -----  
 Address -----  
 Trade -----  
 Type of firm -----  
 Minority group -----  
 Date awarded -----  
 Dollar -----

II. Solicitations to minority contractors for bids on project (Exclude successful bidders noted above):

Name of contract -----  
 Address -----  
 Trade -----  
 Type of firm -----  
 Minority group -----  
 Bids received:  
     Yes -----  
     No -----  
 Reason for rejection -----

III. Other good faith efforts to secure minority enterprise participation on project. (Describe.)

Name of Contractor -----  
 Signed by -----  
 Title -----  
 Witness -----

ATTACHMENT 3

THE WHITE HOUSE, *September 12, 1977.*

THE INTERAGENCY COUNCIL FOR MINORITY BUSINESS ENTERPRISE

The Interagency Council for Minority Business Enterprise promotes minority business assistance from within the Government. It assures that minority businesses have ready access to all Federal opportunities and programs having the potential to assist them in their endeavors.

The Council is chaired by Dr. Sidney Harman, Under Secretary of Commerce, and its membership includes Under Secretaries, Deputy Secretaries and Deputy Administrators of major agencies and departments having programs to promote and strengthen minority businesses. The Council functions through an Executive Committee and various program-oriented committees.

Generally, Council members chair the committees whose Executive Directors are provided by the Commerce Department's Office of Minority Business Enterprise (OMBE). Dr. Randolph T. Blackwell, Director of OMBE, supports the Council with staff assistance, with additional support coming from member departments and agencies. Under the provisions of Executive Order 11625, OMBE is the lead agency in the Federal government for the minority enterprise program.

The program-oriented areas of concentration include: Business Management Development (Education and Training); Indian Business Development; Minority Business Opportunities Committee (MBOC) Coordination; Procurement; and Special Programs. The MBOC Coordination Committee merits special emphasis in that it represents the link between the Council and 37 Minority Business Opportunity Committees. These 37 MBOCs are the local Federal counterparts of the Council with the responsibility to ensure that department and agency commitments of programs and resources to minority business within the Council come to fruition in the 37 jurisdictions.

Primarily the Council seeks to assist minority businesses by: identifying appropriate resources within each agency, developing strategies to provide access to the resources, assuring agency support of the strategies, and implementing a comprehensive and coordinated program to assist the minority businesses.

MEMBERS OF THE INTERAGENCY COUNCIL FOR MINORITY BUSINESS ENTERPRISE

Martha M. Mitchell, Special Assistant to the President, The White House, Washington, D.C.

Sidney Harman, Under Secretary, Department of Commerce, Washington, D.C.

Hale Champion, Under Secretary, Department of Health, Education and Welfare, Washington, D.C.

James Joseph, Under Secretary, Department of the Interior, Washington, D.C.

Elsa A. Porter, Assistant Secretary for Administration, Department of Commerce, Washington, D.C.

Warren Christopher, Deputy Secretary, Department of State, Washington, D.C.

Mary E. King, Deputy Director, ACTION, Washington, D.C.

Robert W. Fri, Deputy Administrator, Energy Research and Development Administration, Washington, D.C.

Barbara Blum, Deputy Administrator, Environmental Protection Agency, Washington, D.C.

David J. Bardin, Deputy Administrator, Federal Energy Administration, Washington, D.C.

John C. White, Deputy Secretary, Department of Agriculture, Washington, D.C.

Charles W. Duncan, Deputy Secretary of Defense, Department of Defense, Washington, D.C.

Jay Janis, Under Secretary, Department of Housing and Urban Development, Washington, D.C.

Peter F. Flaherty, Deputy Attorney General, Department of Justice, Washington, C.C.

Robert J. Brown, Under Secretary, Department of Labor, Washington, D.C.

Bette B. Anderson, Under Secretary, Department of Treasury, Washington, D.C.

Alan Butchman, Deputy Secretary, Department of Transportation, Washington, D.C.

William Allison, Deputy Director, Community Services Administration, Washington, D.C.

Delio Gianturco, First Vice President and Vice Chairman, Export-Import Bank of the United States, Washington, D.C.

Grace Olivarez, Director, Community Services Administration, Washington, D.C.

Robert Griffin, Deputy Administrator, General Services Administration, Washington, D.C.

Wayne Granquist, Associate Director, Office of Management and Budget, Washington, D.C.

Alan Lovelace, Deputy Administrator, National Aeronautics and Space Administration, Washington, D.C.

A. Vernon Weaver, Administrator, Small Business Administration, Washington, D.C.

Rufus Wilson, Deputy Administrator, Veterans Administration, Washington, D.C.

Patricia Cloherty, Deputy Administrator, Small Business Administration, Washington, D.C.

Les Settig, Director, Office of Federal Procurement Policy, Office of Management and Budget, Washington, D.C.

Charles L. Clapp, Vice Chairman, Interstate Commerce Commission, Washington, D.C.

Dr. Randolph Blackwell, Director, Office of Minority Business Enterprise, Department of Commerce, Washington, D.C.

Edward C. Creutz, Acting Deputy Director, National Science Foundation, Washington, D.C.

Robert H. McCutcheon, Assistant Postmaster General for Procurement Supply Department, U.S. Postal Service, Washington, D.C.

Richard E. Wiley, Chairman, Federal Communications Commission, Washington, D.C.

Dennis Green, Associate Director, Office of Management and Budget, Washington, D.C.

Arthur F. Williams, Executive Director, Interagency Council for Minority Business Enterprise, Washington, D.C.

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#### ATTACHMENT 4

[From the Washington Post, Nov. 12, 1977]

#### FIRM HEADED BY WOMAN IS ORDERED REINSTATED IN MINORITY PROGRAM

(By Timothy S. Robinson)

U.S. District Judge Gerhard A. Gesell ordered the Small Business Administration yesterday to reinstate at least temporarily a Washington research firm headed by a white woman to a special minority government contract program.

The temporary reinstatement means the woman's firm will continue to the eligible for about \$645,000 in government contracts awarded under the program.

Last summer, the SBA had ruled that Dr. Marilyn Andrulis, the 51 per cent owner of Andrulis Research Corp., was eligible for the program under which the SBA handles certain contracts for other government agencies in an attempt to spread them among minority groups.

However, in the middle of September the SBA notified Dr. Andrulis that she had been dropped from the program because she did not fit SBA's description of being socially or economically disadvantaged.

In issuing the temporary ruling yesterday, Gesell said the hearing that resulted in Dr. Andrulis' removal from the program was improper.

Gesell said that based on the limited hearing held before him yesterday in connection with a suit filed by Dr. Andrulis, her contract eligibility was taken away from her with no notice, no adequate hearing, and no established standards. "The findings were submerged and kept out of sight", Gesell said. "That's not a hearing in the United States of America."

Dr. Andrulis said in her suit that her application for entrance into the SBA's minority contracting program passed all early tests within the agency. She said she was prepared to enter into actual contracts when she heard a "rumor" that she was being removed from the program.

Dr. Andrulis said she checked out the rumor and found out that it was true. A few days later, the SBA informed her that she had been removed from the program because she was a "nonminority," because her partner-husband also is nonminority, because her firm's problems are similar to other small research firms, because she and her husband are worth probably \$200,000 or more, and because her sex did not deny her "social or economic contacts" necessary for her field.

Dr. Andrulis claims that, as a woman, she is a minority in her field of research, which includes projects as diverse as anticancer research and antisubmarine warfare. She also claims that the other criteria under which she was removed from the program were either inaccurate or not applied to other similar participants in the program.

She appealed the decision within the SBA, but her appeal was rejected at a hearing at which no transcript was kept.

Gesell said he would issue the temporary order yesterday because Dr. Andrulis's business would be irreparably harmed if she were not eligible for the contracts and because the probability was high that she would ultimately succeed in her suit.

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## ATTACHMENT 5

### GAO REPORT ON QUESTIONABLE EFFECTIVENESS OF THE 8(a) PROCUREMENT PROGRAM

#### [Digest of Report]

#### *Why the Review Was Made*

Section 8(a) of the Small Business Act of 1953 gives the Small Business Administration (SBA) the authority to enter into procurement contracts with Federal agencies and, in turn, subcontract the work to small businesses. SBA has used this authority to develop a program designed to assist socially or economically disadvantaged small businessmen in achieving a competitive position in the financial marketplace. Since 1968, when the 8(a) program was started, SBA has awarded 6,912 subcontracts totaling \$737,100,000 to over 2,800 business firms. (See pp. 4 and 5.)

Members of Congress have expressed concern over the benefits derived from the 8(a) program. Accordingly, GAO reviewed the program to determine whether eligible firms were becoming self-sufficient and viable.

GAO did most of its work in Washington, D.C., and in the Atlanta, Dallas, Detroit, Philadelphia, New York, and San Francisco areas. (See p. 35.)

#### *Findings and Conclusions*

##### PROGRESS OF 8(A) FIRMS

SBA's success in helping disadvantaged firms to become self-sufficient and competitive has been minimal. From 1968 to August 1974, only 31 firms successfully completed the program.

GAO evaluated the progress of 110 firms that had received at least 1 subcontract before December 31, 1970. These firms received over \$81.4 million in 8(a) subcontracts. (See p. 7.)

Of the 110 firms, 73 had not reached self-sufficiency. Twenty firms deteriorated financially, 27 went out of business, and the remaining 26 had either a slight financial improvement (but not enough to make the firm self-sufficient) or no

change. Of the remaining 37 firms, 18 became self-sufficient and 19 were not classified because of insufficient information.

A major reason for this lack of success was SBA's inability to control the supply of contracts from Federal agencies. Although applicants specify in business plans the amount of assistance they need each year to become self-sufficient, SBA cannot guarantee any level of assistance.

SBZ did not provide adequate assistance to the 20 firms that deteriorated financially or the 27 firms that went out of business. Sixteen of these 47 firms projected a need for \$17.1 million of assistance, but SBA provided only \$5.8 million in assistance. (See p. 9.)

Fourteen of 19 officials at Federal agencies supplying contracts to ASB advised GAO that they could not forecast their procurement needs so they could not guarantee SBA any given level of contracts for the 8(a) program. (See p. 10.)

#### EXTENT AND EFFECT OF SPONSORSHIPS

SBA encourages nondisadvantaged businesses (sponsors) to provide management services, training, and capital to 8(a) firms.

Ineffective monitoring by SBA of the activities of sponsors coupled with the high degree of control exercised by sponsors over disadvantaged firms permits some sponsors to maintain their standing in the marketplace by using the 8(a) program. Eighty-nine firms accepted into the 8(a) program had part owners and/or sponsors who were nondisadvantaged. Of these firms, 77 received contracts amounting to about \$132.5 million under the program.

Experienced contractors normally become sponsors by forming new corporations using former employees as stockholders and officers and by providing goods and services to the new corporations for a fee. The sponsors also obtain 49 percent or less ownership in the 8(a) firms. (See app. IV for a description of the relationship between a sponsor and an 8(a) firm and the extent to which the sponsor exercised controls.) (See p. 19.)

It appears that SBA relinquished to sponsors its responsibility for insuring that 8(a) firms are provided with capital, management services, and training to aid them in becoming self-sufficient. The sponsors often controlled the firms, contrary to SBA's objective of helping the firms to become self-sufficient.

This occurred because SBA did not (1) monitor the extent to which sponsors controlled 8(a) firms or (2) determine whether firms were becoming self-sufficient. Instead, SBA considered majority ownership of the firms by disadvantaged individuals as evidence of their control.

Officials of six of the seven sponsors GAO reviewed expressed a desire to develop.

